TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 232.

FREDERICK DAVEY ET AL., CLAIMANTS OF THE SCHOONER STEPHEN MORGAN, APPELLANTS,

vs.

JOSEPH GOOD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

PHILADELPHIA BAR ASSOCIATION

FILED NOVEMBER 7, 1874.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, (being the sixth day of the same month,) in the year of our Lord one thousand eight hundred and seventy-four:

Present, the honorable Hugh L. Bond, circuit judge; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshall.

JAMES W. CHEW, *Clerk.*

In the record of proceedings of the said court among others were the following, to wit:

THE CLAIMANTS OF THE SCHOONER STEPHEN Morgan, appellants,
vs.
JOSEPH GOOD.

Be it remembered that heretofore, to wit, on the 31st day of March, in the year 1873, the district court of the United States for the district of Maryland transmitted to the circuit court here the following transcript of record, which is in the words and of the tenor following, to wit:

Record from district court.

2 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States of America for the Maryland district, begun and held at the city of Baltimore on the first Tuesday in December, (being the third day of the same month,) in the year of our Lord one thousand eight hundred and seventy-two:

Present, the honorable William F. Giles, judge of Maryland district; Archibald Stirling, jr., esquire, attorney; Edward Y. Goldsborough, esquire, marshall.

JAMES W. CHEW, *Clerk.*

Among other were the following proceedings, to wit:

JOSEPH GOOD
vs.
SCHOONER STEPHEN MORGAN. } In admiralty.

Libel

Libel.—(Libel filed October 8th, 1872.)

UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the honorable William Fell Giles, judge of the district court of the United States within & for the district of Maryland:

3 Joseph Good, of Kingston-upon-Hull, England, a subject of the Queen of Great Britain, owner of the steamship Carolina, hereinafter mentioned, exhibits this his libel against the schooner Stephen Morgan, (whereof E. Van Cleaf is or lately was master,) now lying in the port of Baltimore, in the district of Maryland aforesaid, & within the admiralty and maritime jurisdiction of this honorable court, her boats, apparel, tackle, & furniture, & against all persons lawfully inter-

vening for their interest in the same, in a cause of collision, civil and maritime, & alleges as follows:

First. That on the second day of October, in the year 1872, the said steamship Carolina, owned as aforesaid, being a registered British vessel of eleven hundred tons burthen or thereabouts, being tight, staunch, well manned, tackled, appareled, & provided, under command of Robert Thomas MacGarr as master thereof, sailed from the port of Baltimore aforesaid, with a pilot on board in charge of the navigation thereof, bound on a voyage to Queenstown, Ireland, for orders.

Second. That during the said voyage, and on the second day after leaving port, to wit, about twenty minutes past four o'clock a. m. of the third day of October, the said steamship being then off York Spit light, in the lower part of Chesapeake Bay, the course of said steamer being then south by west, the man on the lookout reported a red light ahead; that the pilot, seeing said light, & that it was borne by a
4 vessel coming up the bay, ordered the man at the wheel to port the steamer's helm, so as to make her head south-southwest, which was done, & brought the said red light about two points on the steamer's port bow; that said red light, when first seen, was about two miles distant, & was soon discovered to be borne by a three-masted schooner, coming up the bay with a fair wind, yawing considerably & steering wildly; that thereupon the pilot again ordered the steamer's helm to be ported hard aport, which was done, bringing the steamer's head round to the southwest, which was her course at the time of the collision hereinafter mentioned; that when said vessels had approached so near to each other as to be within long hailing distance, the schooner suddenly starboarded her helm; that the said pilot then called out to those on board of the schooner to put their helm up, the said schooner then being on the port tack, and having the wind on her port side; that no answer was returned by those on board of the schooner, nor was any notice taken of the warning; that the helm of the schooner was still kept to the starboard, causing the said schooner to violently collide with & strike the said steamship amidships, inflicting the damage & injury hereinafter mentioned.

Third. That before & at the time of the aforesaid collision the weather was perfectly clear, and the wind for said schooner fair; that the said steamship had all her proper lights, as required by law, displayed & brightly
5 burning, so that the same could easily be seen at the distance at which the schooner's light was first seen by those on board of the steamer, & would have been seen if proper lookout had been kept by those on board of the schooner; that said steamship was steering her proper course down the bay, under the direction of the pilot; that before & at the time of said collision, & when said schooner's light was first seen, besides the man on the lookout, at the bow of said steamer, at his proper station on the top-gallant forecastle, there were on the bridge of said steamship the pilot, the chief officer, whose watch it was when said collision happened & who was then commanding the deck, & the man at the wheel; & that the watch were all on deck; that everything was done on board of said steamship that was proper to be done to avoid said collision, & that said collision & injury occurred through & by reason of the careless, negligent, unskilful, & improper handling and management of the said schooner, & would not have happened if due caution & proper diligence had been used by those on board of the said schooner, & that said collision & injury were in no way caused by those on board of the said steamship Carolina.

Fourth. That the said schooner by which the said damage had been

done proved to be the Stephen Morgan aforesaid, under the command of the said E. Van Cleaf as master thereof, and being about two hundred tons burthen, bound on a voyage from New York to
6 Georgetown, in the District of Columbia, but now, as aforesaid, lying in the port of Baltimore, & within the jurisdiction of this court.

Fifth. That the said steamship Carolina was so injured & disabled by the force & violence with which she was struck by the said schooner Stephen Morgan as to render it necessary for her to return to the port of Baltimore for repairs; that at the time of said collision & injury sustained by the said steamship, the libellant, Joseph Good, was the true & lawful owner of the said steamship; that the said steamship was of the value of ninety thousand dollars or thereabouts, & that by reason of the said careless, negligent, unskilful & improper management of the said schooner Stephen Morgan & of the collision thereby occasioned of said schooner with said steamship, the libellant has sustained damages to the amount of from twelve to fifteen thousand dollars or thereabouts, for which he claims reparation in this suit.

Sixth. That all & singular the premises are true.

Wherefore the libellant prays that process in due form of law may issue against the said schooner Stephen Morgan, her boats, tackle, apparel, & other furniture; and that this honorable court will pronounce for the damages aforesaid, & decree the same to be paid with costs, and for such other & further relief & redress as to right and justice may appertain & the court is competent to give in the premises.

7 JOSEPH GOOD,
Pp. R. T. MACGARR,
Master.

I. NEVITT STEELE,
T. W. HALL, JR.,
Proctors for Libellant.

DISTRICT OF MARYLAND, *ss:*

Robert Thomas MacGarr being sworn, says that he is the master of the said steamship Carolina; that he has read the foregoing libel & knows the contents thereof, & that the same is true to the best of his knowledge, information, & belief.

R. T. MACGARR, *Master.*

Subscribed and sworn to before me this 8th day of October, 1872.
ISAAC BROOKS, JR.,
U. S. Commissioner.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

The President of the United States of America to the marshall for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep schooner Stephen Morgan, her boats, apparel, tackle, & furniture, if she be found in your district, to appear before the judge of the district
8 court of the United States of America for the district of Maryland, at the United States court-room, in the city of Baltimore, on the first Tuesday of December next, to answer unto Joseph Good,

owner of the steamship Carolina, in a cause of collision, civil and maritime; and how you shall execute this precept you make known to us in our district court for the district aforesaid; and have you then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, this first Tuesday of September, in the year of our Lord one thousand eight hundred and seventy-two.

Issued 8th day of October, 1872.

[SEAL.] JAMES W. CHEW, *Clerk.*

Marshall's return.

Atta. & mo. served Oct. 8, '72.

E. Y. GOLDSBOROUGH,
U. S. Marshall.

Claim.

U. S. dist. ct.—In admiralty.

JOSEPH GOOD
vs.
THE SCHOONER STEPHEN MORGAN.

The claim of Job Falkinburgh, Frederick Davey, & others, owners of the schooner Stephen Morgan, of Jersey City, New Jersey, duly
9 enrolled and licensed at the port of New York.

And now comes Frederick Davey, on' of the owners of the schooner Stephen Morgan, and agent for the other owners in this behalf, and makes oath on the Holy Evangely of Almighty God that he, the said Frederick Davey, and Job Falkinburgh, Henry Davy, John R. Halladay, William Keeney, Samuel Birdsall, Amos Falkinburgh, and Stephen Morgan, all residents of the State of New Jersey and citizens thereof, are the true and bona-fide owners of said schooner Stephen Morgan, and that no other person is the owner thereof. And at the same time the said Frederick Davey made oath as aforesaid that he is duly authorized to put in this claim by the owners.

FREDERICK DAVEY.

BROWN & BRUNE,
Proctors for Claimants.

Subscribed and sworn to before me this eleventh day of October, A. D. 1872.

R. LYON ROGERS,
U. S. Commissioner.

Stipulation.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered that on this 15th day of October, in the year of our Lord one thousand eight hundred and seventy-two, before me, Robt. Lyon Rogers, a commissioner appointed by the circuit court
10 of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes

depending in the courts of the United States," appear Frederick Davey; William E. Hooper, corner of South and Pratt streets, Baltimore, Maryland; and William J. Hooper, corner of South and Pratt streets, Baltimore, Maryland, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves and do acknowledge themselves, their heirs, executors, and administrators to be bound in the sum of fifteen thousand dollars, for the claimants of the schooner Stephen Morgan unto Joseph Good, to perform and fulfil the final order and decree of the said district court, and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit in and for the Maryland district, and, in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said Joseph Good is libellant, and the claimants of the said schooner Stephen Morgan are respondents, and unless they so do they severally consent that execution shall issue against them,
11 their heirs, executors, and administrators, their goods, chattels, lands, and tenements, wheresoever found or to be found.

Acknowledged before—
[SEAL.] ROBT. LYON ROGERS,
U. S. Commissioner.

Answer.

District court of U. S., district of Maryland.—In admiralty.

JOSEPH GOOD
vs.
THE SCHOONER STEPHEN MORGAN, FREDERICK DAVEY, JOB FALKINBURGH, & others, claimants.

The answer of Frederick Davey and others, owners and claimants of the schooner Stephen Morgan, to the libel of Joseph Good against the said schooner.

And now comes Frederick Davey, Job Falkinburg, Henry Davey, John R. Hallady, William Keeney, Samuel Birdsall, Amos Falkinburgh, Thomas J. Falkinburgh, and Stephen Morgan, all residents and citizens of the State of New Jersey, owners and claimants of the schooner Stephen Morgan, of Jersey City, New Jersey, whereof Elijah Van Cleaf was and is master, and for answer to the libel of Joseph Good against the said schooner allege and propound as follows, to wit:
12 First. The said vessel is a three-masted schooner of the burthen of about 259 tons, duly enrolled and licensed at the port of New York.

Second. As to the various matters and things contained in the first article of said libel, these respondents have no knowledge nor information, and they put the said libellant to the proof thereof.

Third. As to the various matters and things contained in the second and third articles of said libel, the same are therein in great part falsely and untruly alleged and pleaded, for the truth and fact was and is, and these respondents do allege and propound that:

On the night of the second and the morning of the third day of

October, 1872, the said schooner, being tight, strong, well manned, tackled, appareled, and provided, under the command of the said Elijah Van Cleaf, as master thereof, and being then on a coasting-voyage from the port of New York to the port of Georgetown, D. C., without a cargo on board, was in the lower part of Chesapeake Bay, about twenty or twenty-five miles from the capes, bound up the bay; that at four o'clock in the morning of said 3rd October, the mate of said schooner came on deck and relieved the master, who had, up to that hour, been on deck in charge of the navigation; that the mate had charge of the deck between the hours of four and five o'clock on said morning, and had with him, on his watch, two able seamen,
13 one of whom was stationed as a lookout on the forecastle and the other was at the helm. That all three were continuously on deck, and constantly and vigilantly engaged in the discharge of their duty. That the weather was fair, the night was clear overhead, with a slight mist or haze on the water, and the wind blowing a fresh & steady breeze from about southwest by west. The water was ruffled, but not very rough. At four o'clock a. m., when the mate came on deck, the schooner's lights, duly placed as required by law, were burning brightly, and the schooner was a little above York Spit, heading north by west ½ west. She was on the port tack, & all her sails were set except the main-topsail and the jib-topsail. Her speed was about seven or eight knots an hour. About ten minutes after the mate took charge, he directed the man at the wheel to change the schooner's course half a point, to north by west, which was her proper course up the bay. About twenty minutes after four a. m. the lookout saw a bright light ahead, about a point or a point and a half on the starboard bow. He looked round immediately to report it to the mate, who was aft, but saw him already standing looking at the light through his glasses. The lookout then resumed his watch & continuously observed said light, which he thought belonged to a vessel at anchor. The mate, who was standing aft, to the leeward of the spanker-boom, & also on the watch, saw
14 the light about the same time as the lookout & immediately got his glasses, which were just at hand, and looked at it. He supposed it to be the light of a ship at anchor, because there was none but a white light to be seen, and thought she was distant about a mile & a half to two miles. The position of the schooner was then a little above York Spit, and nearer to the western than the eastern shore of Chesapeake Bay, but with plenty of room to sail and manœ'vre on both sides of the place where the vessel bearing the light appeared to be at anchor. When he first looked at the light the mate told the man at the wheel that it was a ship at anchor, & he directed him to let the schooner luff about a point. That being done, the light was brought to bear about two points on the schooner's starboard bow. The helmsman then steadied the schooner, which was running about seven or eight knots an hour, and the mate stood looking at the white light, which was still the only one visible, & let the schooner run on a little. Then, thinking the schooner might not fairly clear the ship, supposed so to be at anchor, the mate told the man at the wheel to luff a little more, so as to allow plenty of room. He did so, and the schooner ran on a little way; and the mate kept looking with his glasses, as before, and the lookout also watching from his post on the forcastle. Very soon after the last-mentioned order, and about seven or eight minutes after the bright
15 light was first seen, the schooner being then very close to the vessel which bore it, it was discovered that the said vessel was a steamer, by her smoke-stack. The two vessels being then very close

together, the mate feared it was impossible to keep off & avoid a collision, but, nevertheless, in the hope of doing so, he ordered the helmsman to put his wheel hard aport. At that moment the captain came on deck. While in his berth below he had heard the mate say, "let her luff," and soon after, "let her luff," again. He then ran on deck & asked the mate what was the matter. The mate said there was a light on the lee bow. The master looked under the boom & saw the light, and ordered the wheel to be put hard down, which was immediately done.

Under the order just before given by the mate, the wheel had been turned a few spokes to port; but the order of the master being promptly obeyed, the schooner began to come to, which slackened her speed; and at the moment of the collision, which presently thereafter ensued, the schooner was still coming to, and her sails were shaking in the wind.

The order given by the master was with the view of passing to windward of the vessel supposed to be at anchor, and had the effect of lightening as much as possible the force of the collision, and of preventing the destruction of both vessels, which probably would have re-
16 sulted if at the last moment the helm of the shooner had been put hard aport. When the mate first made out the vessel bearing the bright white light to be a steamer, she was less than a hundred yards off, on the starboard bow; and when the master ordered the helm hard astarbord the distance between the two vessels was about fifty yards.

Almost immediately after the schooner's helm had been put hard astarboard, as aforesaid, the collision occurred.

The schooner struck the steamer abaft the fore rigging, and a little forward of amidships. The schooner, at the moment of collision, was heading about west by north half north, and her helm was hard astarboard; the vessel was coming into the wind and her sails were shaking. Immediately after the collision the schooner dropped astern of the steamer, and the steamer disappeared, apparently keeping on her course without making any inquiries or tendering assistance.

At no time was any light seen on the steamer by any of those on the schooner, except the bright light aforesaid, although from the position of said steamer with reference to the schooner, the red light of the said steamer, if it had been burning, should have been distinctly and continuously visible from the schooner from the first.

At no time, either before or after the collision, was there a hail heard from any one on board said steamer, nor was any whistle sounded
17 or other signal made on said steamer.

Nobody on board the schooner thought the vessel they were approaching was in motion until just before the collision; and there was no certain evidence of the fact that that vessel was in motion, the steamer being a propeller & making no noise, until the collision, when those on the schooner saw the water in the wake of the steamer agitated by her screw as the schooner dropped astern immediately after the collision. That the steamer, from the moment she was first seen until the collision, was always on the starboard side of the schooner, and that the changes of course made on the schooner, until & including the last one, were made with the object and direct tendency to bring the light of said steamer more & more on the starboard side of the schooner and to increase the distance between the two vessels. That the red light of the schooner having been placed on her port side as required by law, and the steamer being always on her starboard side, it was impossible for those on the steamer at any time to see the red light of the schooner, but that her green light must have been plainly visible

to them. That there was no change of the schooner's sheets from the time the mate took charge until the collision, and that the schooner
18 was sailing all that time on her port tack. That everything was done on board of the said schooner that was proper to be done to avoid said collision, and the said collision & the injury caused by it occurred through and by reason of the careless, negligent, unskilful, and improper handling and management of the said steamer, and would not have happened if due caution and proper diligence had been used by those on board of the said steamer; and that the said collision and injury were in no way caused by those on board of the said schooner Stephen Morgan.

Fourth. These respondents admit the facts alleged in the fourth article of said libel, but expressly deny that the said schooner is responsible for the damage therein alleged to have been done.

Fifth. As to the various matters and things contained in the fifth article of said libel these respondents have no knowledge nor information, and they put the said libellant to the proof thereof.

Sixth. That by said collision the said schooner was seriously injured. Her stem was knocked to pieces, and some of her planks were started. That by said injury she was caused to leak a good deal, and compelled to come to anchor. That after daylight on the morning of the 3rd October the said leaks were reduced by the efforts of those on board, and the master made sail for the port of Baltimore for repairs. That
19 the said schooner arrived in said port on the 4th October, and that said repairs were not completed until the 10th October; and that said repairs cost a large sum of money, besides the loss occasioned by detention and demurrage.

Seventh. That all & singular the premises are true. Wherefore the respondents pray that this honorable court will pronounce against the demands of the libellant in his aforesaid libel mentioned and set forth, with costs.

ELIJAH VAN CLEAF.

BROWN & BRUNE,
Proctors for Respondents.

Subscribed and sworn to before me this 22nd day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

Depositions.

Depositions taken before Robt. Lyon Rogers, United States commissioner for the fourth circuit, in and for the Maryland district, at his office, in the city of Baltimore, on 17th day of October, 1872, to wit:

DAVID HEDGES being duly sworn according to law to testify the whole truth, and being examined on behalf of the libellant, makes oath, deposeth, and saith as follows, to wit:

20 1. Int. What is your name, your age, and your occupation?

Answer. My name is David Hedges; I am eighteen years of age, and my occupation is sea-faring. I have been going to sea four years.

2. Int. Were you on board the steamship Carolina, Robt. T. Macgarr, master, on the 3rd of October, A. D. 1872, on the voyage of said steamer from Baltimore to Queenstown; and, if so, in what capacity?

Answer. I was on board the steamer on that day as ordinary seaman.

3. Int. What were you doing between four and five o'clock of the morning of that day?

Answer. I came on deck that morning at 4 o'clock, and when I came on deck the second officer told me to trim the side lights and mast-head light, and I did so. I went into the lamp-room after I trimmed the lights, and I came out on deck, and heard the pilot shouting and I came to see what he was shouting, and just at that time the schooner struck us.

4. Int. How many lights did the steamer have; what were they; where were they, and how were they burning?

Answer. She had three lights; one was a mast-head light; another was a port-side light, which was red; and the other was the starboard-side light, which was green. The mast-head light was a bright
21 light. There was one light on the mast-head, one on the port bow, and one on the starboard bow, and they were all burning bright.

5. Int. Did you trim them again that morning, or were they trimmed again before they were taken in?

Answer. I did not trim them again, and I do not know that anybody did.

6. Int. Who attended to the lights during the watch from four o'clock on which you were?

Answer. The boatswain.

7. Int. When were the lights taken in; who took them in, and how were they burning?

Answer. They were taken in at half past five; I took them in, and they were then burning bright.

Cross-examination:

1. Cross-int. Who was the second officer who gave you the order about trimming the lamps?

Answer. His name is James Emory, the second mate.

2. Cross-int. Where was he when he gave you this order, and when was it given?

Answer. He was on the bridge, and the order was give about three minutes past four.

3. Cross-int. How did the second officer come to give you this order after four o'clock?

Answer. Because he was not relieved.

22 4. Cross-int. Did you take the lamps down when you trimmed them?

Answer. I did, and put a relieving-light in their place.

5. Cross-int. Tell the commissioner all you did in trimming the lamps; where you took them to; what you did to them; how long you had them down; and state if you did not have them in the lamp-room when you heard the pilot shout.

Answer. I filled them with oil and pricked them up; the oil I got from the lamp-room. I had them down about five minutes. I did not have them in the lamp-room when I heard the pilot shout. They were all replaced in their proper places at that time.

6. Cross-int. What did you go to the lamp-room for afterward, when you heard the pilot shout?

Answer. To place the relieving-lights in their places in the lamp-room.

7. Cross-int. Did you take the relieving-lights to the lamp-room immediately after you had placed the lights in their places?

Answer. Yes, I did, and sat there about a quarter of an hour.

8. Cross-int. Who was with you in the lamp-room, and what were you doing this quarter of an hour?

Answer. No one was with me. I was engaged there in trimming two cargo-lamps.

23 9. Cross-int. What were you doing that for; by whose orders?

Answer. I was doing it because they wanted it; they had been used in Baltimore. I was doing it by no one's orders.

10. Cross-int. What do you mean by saying in your examination-in-chief that the boatswain had charge of the lights?

Answer. Because he looks after them every half-hour to see if they want trimming.

11. Cross-int. How then came the second mate to give you this order when it was not his watch, and the boatswain said nothing to you?

Answer. The second mate gave the order because he was not relieved. I do not suppose the boatswain went forward.

12. Cross-int. Did not the first mate come on deck with you at four o'clock to keep his watch?

Answer. He came on deck at ten minutes past four.

13. Cross-int. Were you on the watch as ordinary seaman after four o'clock on that morning?

Answer. Yes, sir.

14. Cross-int. Who came on deck with you to keep the watch at four o'clock.

Answer. The man at the wheel, the man on the lookout, and the boatswain.

15. Cross-int. How do you know that it was five minutes be-
24 tween the time of taking down the lights and putting them up again, and that you were a quarter of an hour in the lamp-room after taking in the relieving-lights?

Answer. I looked at the clock when I had done trimming the lamps, and I looked at the clock again when I came on deck out of the lamp-room.

16. Cross-int. Where is the lamp-room and where is this clock that you saw?

Answer. The lamp-room is under the bridge, and the clock is in the mates' window, abreast of the bridge.

17. Cross-int. How many times are the lamps trimmed at night, and what are the usual times for trimming?

Answer. Every four hours. They are trimmed at twelve and at four, if it is needed.

18. Cross-int. Did the second mate tell you that the lamps needed trimming when he told you to do it?

Answer. Yes, sir.

19. Cross-int. Has it been your business to trim the lamps when they needed it on your watch, or do they call upon any seaman to do it?

Answer. It is my business.

his
DAVID + HEDGES.
mark.

Subscribed and sworn to before me this 17th day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

25 LAWRENCE RAMSEY, being duly sworn, according to law, to testify the whole truth, and being examined on behalf of the libellant, makes oath, deposeth, and saith as follows, to wit:

1. What is your name, your age, and your occupation?

Answer. My name is Lawrence Ramsey; my age is twenty-two years; I am a seaman, and have been one for four years.

2. Int. Were you on board the steamship Carolina of Hull, England; Robert T. Macgarr, master; on a voyage from Baltimore to Queenstown, on the 3rd of October, A. D. 1872; and if so, in what capacity were you on board?

Answer. I was on board as a seaman.

3. Int. What were you doing between four and five o'clock of the morning of the said 3rd of October, A. D. 1872?

Answer. I was forward on the forecastle looking for the lights of vessels passing up and down, and at the land-lights, and to report them.

4. Int. When did you go upon the lookout?

Answer. At four o'clock.

5. Int. Did you see and report any light; if so, when?

Answer. I seen a red light about ten minutes after four, bearing about a point on the port bow. I reported it to the pilot, who answered me all right.

26 6. Int. How far off did said light appear to be when you first saw it and reported it?

Answer. About two miles.

7 int. What sort of a morning was it; what was the state of the weather and the wind?

Answer. It was clear and fine. The wind was blowing fresh and steady.

8. Int. How soon did you make out the vessel bearing the red light, and what was her course?

Answer. I made out the vessel about ten minutes after I saw the light, and when she was three or four hundred yards from us. I made her out to be a three-masted schooner. Her course was about north-northeast.

9. Int. What was the position of the red light with respect to the steamer at the time you made it out to be borne by the schooner, and to be about three or four hundred yards distant?

Answer. It was bearing about three points on the port bow.

10. Int. Did you observe any change in the schooner's course; and if so, what?

Answer. When she was about five points our port bow, she hauled up towards us about a point.

11. Int. State all that happened afterwards, as far as you know.

Answer. The schooner sailed on and struck us right abeam.

27 She carried away the foreyard and broke one of the boat's davits, and the rail and bulwarks and some other articles.

12. Int. Did you hear anything said or any orders given on board of either vessel just before or at the time of the collision?

Answer. No; I can't say that I did.

13. Int. Did you notice before the collision the steamer's lights? If so, state what lights she had, and how they were burning.

Answer. I did notice the steamer's lights before the collision. She had two side lights and a mast-head light, and they were burning well.

14. Int. What do you mean by two side lights?

Answer. I mean a red and green light on either bow to show other vessels what we were, and also a mast-head light.

15. Int. How long before the collision did you notice the lights?
Answer. Just after I reported the schooner's red light.

Cross-examination:

1. Cross-int. What was the direction of the wind at the time you first saw the schooner's red light; and at what rate of speed was the steamer then going?

Answer. It was about two points on our starboard bow, I
28 suppose, southwest, but I don't know the direction we were steering. I can't tell at what rate of speed the steamer was going at that time.

2. Cross-int. What is the usual rate of the speed of the steamer, and was she going at the usual rate of speed?

Answer. I do not know the usual rate of speed of the steamer, nor do I know at what rate she was going at that time.

3. Cross-int. How long have you been connected with this steamer as seaman?

Answer. From the second of October of this year until now.

LAWRENCE RAMSEY.

Subscribed and sworn to before me this 17th day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

JAMES MCAVOY, being duly sworn, according to law, to testify the whole truth, and being examined on behalf of the libellant, makes oath, deposeth, and saith as follows, to wit:

1. What is your name, age, and occupation?

Answer. My name is James McAvoy. I am twenty years of age. I am a seaman and have been for the past eight years.

2. Were you on board the steamer Carolina on a voyage from
29 Baltimore to Queenstown on the 3rd day of October, A. D. 1872?

Answer. I was.

3. Were you shipped as one of the crew, and what were you doing between four and five o'clock on the morning of the said 3rd of October?

Answer. I was shipped as one of the crew, and at the time mentioned I was at the wheel of the steamer Carolina.

4. When did you take charge of the wheel, and what course was the steamer steering at that time?

Answer. I took charge of the wheel at four o'clock in the morning. At that time the steamer was steering south by west.

5. Whose watch on deck was it at that time; who were on deck, and was then navigating the ship?

Answer. It was the chief officer's watch on deck. The chief mate was on deck, the boatswain, a man on the lookout, the pilot, a boy, and myself. The pilot was then navigating the ship.

6. Int. Did the steamer alter her course after four o'clock, and how soon after four o'clock; and do you know what was the occasion of her altering her course, and what was the alteration?

Answer. The steamer did alter her course about twenty minutes past four o'clock. Her course was altered because we saw a red-light on our port bow. Her course was altered a point to south-southwest.

30 7. Int. Who first reported the red light?

Answer. The man on the lookout first reported the red light.

8. Int. Did you see the red light yourself? How far distant did it appear to be, and how much on the steamer's port bow, and what was the order given for the change of the steamer's course, and by whom was it given?

Answer. I saw the red light myself after it was reported. It was about a point on the port bow, and seemed to be about two miles distant. The pilot gave the order to keep the steamer away a point.

9. Int. Was there any other change of the steamer's course; and if so, what was the change?

Answer. There was other change of the steamer's course. The pilot ordered her to be kept hard aport.

10. Int. When was that order given, and where was the red light, already reported, at that time?

Answer. The order was given about twenty-five minutes past four, and the red light was at the time about six points on our port bow.

11. Int. What next happened?

Answer. The schooner put her helm hard down, and run into us.

12. Int. How far off did the vessel bearing the red light appear to be when she changed her course, and when did you first make her out to be a schooner?

31 Answer. I could not say how far off she appeared to be. I first made her out to be a schooner when the collision happened.

13. Int. Was anything said on board of either vessel before or at the time of the collision; if so, what?

Answer. I do not know.

14. Int. Did you see anybody on board the schooner?

Answer. I did not.

15. Int. Did anybody hail the schooner, and was there any answer to the hail?

Answer. I do not know whether anybody hailed the schooner.

16. Int. Where did the schooner strike you?

Answer. About amidships.

17. Int. Did you notice any of the steamer's lights before or at the time of the collision; or could you see from your position whether any of the lights were burning?

Answer. I noticed none but the mast-head light, and this is the only one I could see from my position.

18. Int. Was the mast-head light burning before and at the time of the collision?

Answer. What I could see of it, it was burning very well.

19. Int. How long did you remain at the wheel after the collision took place, and until what o'clock?

32 Answer. About an hour and a half. I remained at the wheel until six o'clock.

20. Int. You have stated in answer to the 11th question that the schooner put her helm hard down. Will you state what you mean by that expression?

Answer. I mean hard astarboard.

21. Int. What effect did that have upon the schooner's course?

Answer. I do not know.

22. Int. How did the schooner head after you supposed she put her helm hard down?

Answer. I do not know.

23. Int. Did she head away from or towards the steamer?

(Question objected to by proctor for respondents.)

Answer. She headed towards the steamer.

24. Int. After the pilot ordered you to put the steamer's helm hard aport, and at the time of the collision, how was the steamer heading?

Answer. About southwest.

Cross-examination:

1. Cross-int. How long was the steamer's helm hard aport before the collision?

Answer. I do not know.

33 2. Cross-int. How far was the schooner off when the order hard aport was given?

Answer. I do not know.

3. Cross-int. At what rate was the steamer going when the red light was reported?

Answer. About eight knots.

4. Cross-int. You say in answer to the 11' int. that the schooner put her helm hard down and run into us. How did you know that she put her helm hard down?

Answer. She must have put her helm hard down, or she could not have run into us. If it had been hard up, she would have went the other way.

5. Cross-int. Did you observe any change in the course of the schooner; and if so, when? And if you observed any change, state how far the schooner was then from the steamer.

Answer. I did observe a change in the schooner when we were about fifty yards apart. I observed the schooner coming towards us. I made a mistake in saying fifty yards apart; I should have said a hundred and fifty.

Re-examined by libellant:

25. Int. Were you watching the course of the schooner all the time?

Answer. I was not.

his
JAMES + McAVOY.
mark.

34 Subscribed and sworn to before me this 17th day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

ROBERT FOWLER, being duly sworn, according to law, to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and your occupation?

Answer. My name is Robt. Fowler; I am thirty-two years of age, and I am seaman by profession, and have been going to sea eighteen years.

2. Int. Were you on board the steamship Carolina of Hull, England; Robt. T. Macgarr, master, on a voyage from Baltimore to Queenstown, on the 3rd day of October, A. D. 1872; and if so, in what capacity?

Answer. I was on board, and was chief officer of the vessel.

3. Int. Where were you and what were you doing on board said steamer between four and five o'clock of the morning of said 3rd day of October, A. D. 1872?

Answer. I was on the bridge in charge of the deck, subject to the pilot's orders so far as regards the navigation of the vessel.

35 4. Int. At what hour was the middle watch relieved on the morning of said 3rd day of October, and at what time did you yourself go on deck?

Answer. The watch was relieved at 4 a. m. I took charge of the deck at ten minutes past four.

5. Int. Whom did you relieve in charge of the deck?

Answer. The second officer, Mr. Emory.

6. Int. Did you observe the steamer's lights when you went on deck, and how they were burning, or did you have your attention directed to them in any way?

Answer. I had my attention directed to the lights by asking the second mate if the lamps had been trimmed. He said they had just been trimmed, and I could see the mast-head light, and the reflection of the side-lights from where I was standing.

7. Int. Will you state who composed the watch after four a. m. of said morning when you were in command of the deck, and how they were employed?

Answer. Ramsey was on the lookout; McAvoy was at the wheel; Hedges and the boatswain ready to be called for any emergency that might occur; they were not doing anything in particular; and myself in charge of the deck.

8. Int. If any other person was with you on the bridge, please state who.

Answer. The pilot and McAvoy, at the wheel.

9. Int. Please describe the location of the bridge, its height
36 above deck, and the position of the wheel with reference to said bridge.

Answer. The bridge is about the middle of the ship. It is between eight and nine above deck. The bridge is athwartship. The wheel is about six feet from the fore part of the bridge and exactly amidships.

10. Int. Will you describe the position of the lookout?

Answer. Walking about on the fore part of the top-gallant forecastle.

11. Int. What is the height of the top-gallant forecastle above the main deck; and is there any bulwark or rail around it or anything to obstruct the view of the lookout?

Answer. The top-gallant forecastle is about seven feet six inches above the main deck. There is an iron guard-rail all around, but nothing to obstruct the view of the lookout.

12. Int. What kind of steamer is the Carolina, and on the morning of 3rd of October, between four & five a. m., was she under sail or steam; what was her course when you took charge of the deck, and at what rate was she going?

Answer. The Carolina is a screw-propeller; and on that morning at the hours name' she was under steam only. When I took charge of the deck her course was south by west, and she was going between seven and eight knots.

37 13. Int. Was the course of said steamer subsequently changed; and, if so, how changed, and by whose order, and what was the occasion for such alteration of her course?

Answer. The course was changed to south-southwest by the pilot's order. The occasion of the change was because of the lookout reporting a red light nearly right ahead.

14. Int. When did the lookout report said light? Did you see said light yourself; and, if so, what was its position as to the steamer, and how far off did it appear to be?

Answer. The lookout reported the light about twenty minutes past four. I saw it, and it was about a point on our port bow, and I should judge it was about three miles off.

15. Int. What was the position of said light as to the steamer after the latter changed her course to the south-southwest?

Answer. It was about two points on the port bow.

16. Int. Did you afterwards make out the vessel by which said red light was borne; and, if so, how long afterwards, and what was her position then as to the steamer? And if any further alteration of said steamer's course took place, please state what it was.

Answer. It was about five or ten minutes after the light was
38 reported, I should judge, that the vessel bearing it was ascertained by me to be a schooner, and she was then about four points on our port bow. There was an order from the pilot to put the helm hard aport, which was done, after I made the vessel to be a schooner.

17. Int. State when this last order was given, if you can, and what was the occasion of such order being given.

Answer. The time of giving this order was about five & twenty minutes to five, and the occasion of the order was the yawing or strange steering on the part of the schooner bearing down upon us.

18. Int. Please state what happened after this last order to put the steamer's helm hard aport had been given and obeyed.

Answer. After the helm had been put hard aport I think the first thing that occurred was that I said to the pilot, "You had better sing out to the schooner or she will be into us." The pilot immediately sung out to the schooner to put his helm hard up, and asked him where he was going to. He got no reply from the schooner, but he put his helm astarboard and run into us.

19. Int. Please state whether the course of said schooner was changed in any way after you first saw her; and, if so, how changed and what was the effect of such change of course, if any, on the part of said
39 schooner.

Answer. The course of the schooner was apparently changed to the westward, and the effect of this change of course was to bring the vessels nearer together.

20. Int. State when you observed the change in the schooner's course of which you have spoken, and what was her position then as to the steamer, and what was her apparent distance from the steamer at the time her course was so changed.

Answer. I observed the change between half past four and five and and twenty minutes to five, and her position was about two points before the beam of the steamer. Her distance from the steamer at the time of the change of course was about two hundreds yards.

21. Int. What was the apparent distance between said vessels when your attention was attracted by what you have described as the yawing and strange steering of the schooner and when the pilot ordered the steamer's helm to be put hard aport?

Answer. It was not much over two hundred yards.

22. Int. Where did the schooner strike said steamer, how was the steamer then heading, and what was the direction of the blow?

Answer. The schooner struck the steamer amidships on her port side. The steamer was then heading about southwest ¼ west, and the direction of the blow was from the east-northeast. I made a mistake
40 there; I should have said east-southeast.

23. Int. Did you see any other light on board of said schooner at any time other than the red light of which you have spoken, or did you see or hear anybody on board said schooner?

Answer. I only noticed the red light. I saw what appeared to be a man at the helm or wheel.

24. Int. Will you state whether the said steamer was an iron or wooden vessel, and what was the effect of said schooner's running into her?

Answer. She is an iron vessel, and she was damaged in four plates in her side; carried away foreyard and bridge and life-boat, and did a great deal of other damage.

25. Int. What was the weather before and at the time of the collision, and how was the wind, and from what quarter?

Answer. The weather was fine and clear, and there was a fresh breeze from about the southwest.

26. Int. Will you state whether, if said schooner had kept on the course on which she was first observed by you without making the change of which you have spoken, the steamer having changed her course, as you have testified, said vessels would have come into collision, and what berth said schooner would have had for passing said steamer?

Answer. I don't understand that question.

41 27. Int. I wish you to state whether, in your judgment, if the schooner had kept her original course without changing to the westward, as you have testified, the steamer having already altered her course to the westward, said vessels could possibly have come into contact.

Answer. It would have been impossible.

28. Int. Can you state what would have been the distance, in your judgment, at which said vessels would have passed if the schooner had kept on her course, without such change to the westward, the steamer's course being as you have testified?

Answer. About three-quarters of a mile.

29. Int. Will you state whether the steamer's engines were stopped or her speed reduced before said collision, and whether, in your judgment, after the schooner changed her course to the westward, the steamer could have avoided said collision either by stopping her engines or slacking her speed?

Answer. The engines were neither stopped nor eased during my watch on deck previous to the collision. To have stopped the engines after we found the collision was unavoidable would only have increased the effects.

30th int. Did you consider the collision unavoidable, by any means in your power to prevent it, after the said schooner changed her

42 course to the westward and appeared to be bearing down upon you, or was there any possible change of the steamer's course which could then have prevented said collision?

Answer. It was impossible for the steamer to prevent the collision by any other method than the one pursued.

31. Int. Did you know at the time what vessel it was that run into you; if not, when and where did you first ascertain the name of the vessel by which the steamer was injured?

Answer. I saw it was a three-masted schooner shortly previous to the collision, and ascertained the name two days after my arrival back at Baltimore.

32. Int. Was any attempt made at the time to ascertain what vessel it was with which you had collided; and, if so, state what was done.

Answer. The pilot steered after one vessel. I can't say whether any more, as I was deeply engaged ascertaining the damage.

33. Int. Did the said steamer then continue her voyage; if not, what port did she make, where is she now, and what doing?

Answer. She did not continue the voyage; she sailed into Norfolk, Virginia. At present she is laying in the port of Baltimore, under going repairs.

43 Cross-examination:

1. Cross-int. In answer to the 16' int. in chief you say you ascertained the vessel to be a schooner, and that she was then about four points on our port bow. State what was the apparent course of the schooner at that time and her distance from the steamer.

Answer. As far as I could judge, I should think she was steering about north or north ½ west, and she was about three-quarters of a mile distant at that time.

2. Cross-int. Was her then course what you call her original course in your examination-in-chief?

Answer. It would be impossible for me to say within a point or two what her original course was.

3. Cross-int. What change was apparently made in her course when you say it was changed to the westward in your answer to the 19th int?

Answer. I could not take it upon myself to say, because the vessel yawed two or three times, but apparently to the westward.

4. Cross-int. If, when you discovered her to be a schooner, she was about four points on your port bow, steering nearly north, and three quarters of a mile distant, would she not have to change her course very much to the westward to strike your vessel, if she could in any way come in contact, looking to the speed of your vessel and the course she was steering.

44 Answer. She must have changed her course a great deal to the westward.

5. Cross-int. In answer to the 16th int. in chief you say there was an order from the pilot to put the wheel hard aport, which was done. I now ask you, if this order had been given five minutes sooner, whether the vessels could have come in contact?

Answer. Yes; I think the vessels would have come in contact if it had been done; that is, if the schooner had followed the same course which she eventually did.

6. Cross-int. At the rate at which the steamer was going, how long would it take her to go round with her helm hard aport in a smooth sea?

Answer. In my judgement, I should say it would take her from seven to eight minutes to form a complete circle.

7. Cross-int. What is the length of your steamer?

Answer. Over two hundred feet. I do not know her length exactly.

8. Cross-int. What space would she require to go around?

Answer. I could not answer that without circumstances being specified, such as wind and tide.

9. Cross-int. Situated as the steamer was on the morning of the 3rd of October, 1872, near York Spit, what space would she require to go around?

45 Answer. Not knowing the strength of the tide or *or* the force of the wind exactly, it is impossible for me to give an answer.

10. Cross-int. In answer to the 22 int. you say that when the schooner struck the steamer the steamer was heading about southwest ¼ west, and the blow was from the east-southeast. I wish to know how the schooner was heading at the time she gave that blow.

Answer. The blow came from the schooner from the east-southeast, consequently I judge the schooner to be heading about west-northwest.

ROBERT FOWLER.

Subscribed and sworn to before me this 18th day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

SAMUEL THAXTER, being duly sworn, according to law, to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and your occupation?

Answer. My name is Samuel Thaxter; my age is twenty-seven years, and I am a seaman, and have going to sea for seventeen years.

2. Int. Were you on board the steamship Carolina, of Hull, England, Robert T. Macgarr, master; on a voyage from Queenstown to
46 Baltimore, on the 3rd day of October, A. D. 1872; and if so, in what capacity did you serve on board?

Answer. I was on board, and was the boatswain of the ship.

3. Int. Where were you and what were you doing on board of said steamer between four and five o'clock of the morning of said 3rd day of October, A. D. 1872.

Answer. After the lamps were trimmed I was taking my leisure on the bridge, and sometimes was on the main deck.

4. Int. Will you state what lamps you refer to in your answer to the last question?

Answer. I refer to the port and starboard and mast-head lights.

5. Int. When were said lamps trimmed, and by whom were they trimmed?

Answer. They were trimmed at four o'clock, by the boy David Hedges.

6. Int. Did you see the said lamps trimmed, and where were they trimmed?

Answer. Yes, I saw them trimmed. They were trimmed in the lamp-room.

7. Int. Did you or not notice said lamps after they were trimmed; and if so, when did you notice them next, and how were they burning?

47 Answer. I noticed them after they were trimmed, and I noticed them at half past four o'clock. They were burning brightly.

8. Int. Will you state where said lamps were placed and describe them when you noticed them after they were trimmed?

Answer. I noticed them as soon as they came out of the lamp-room. I took them in my hand. They were placed in the screen abreast the foremast—a red light on the port side, and a green light on the starboard side, and a bright light at the mast-head, forming a triangle.

9. Int. Will you state whose duty it was to attend to the lights during the watch beginning at four o'clock on the morning of *the morning of* the 3rd of October?

Answer. It was the boatswain's duty.

10. Int. Do you know anything of the collision which occurred on said morning between said steamer and the schooner libelled in this case, and did you see said schooner before said collision; and if so, where did you see her, and in what position was she? State generally all that took place, so far as you know.

Answer. I heard the pilot sing out put your helm up, and the next was I heard the crash of the schooner into us. I did not see the schooner before the collision. All I know is that the schooner struck

us, and I went forward and called all hands out, and by that time the schooner was away from us, dropping astern of us.

48 11. Int. Will you state on what portion of the deck you were previous to and at the moment of said collision, and whether, from your position, you could see a vessel approaching on the port side of said steamer.

Answer. I was standing under the bridge, and I could see nothing over the rail—no vessel of any description.

12. Int. State how high the rail or bulwark of said steamer is from that portion of the deck.

Answer. About six feet six inches.

13. Int. Do you know whether any lookout was kept on board of said steamer before and at the time of said collision; and if so, who was on said lookout, and where said lookout is stationed?

Answer. I always make it a practice, when I come on every watch, to ascertain who is on the lookout, and tell him to keep a good lookout, and see who it is that is on the lookout. Before and at the time of the collision, from four o'clock to six o'clock on that morning, Lawrence Ramsey was on the lookout. He was stationed at the top-gallant forecastle, abreast of the ventilator, about five yards from the stern of the vessel.

Cross-examination:

1. Cross-int. Who were on the watch at four o'clock on the morning of the 3rd of October with you?

49 Answer. The chief officer, two able seamen, the boy, and myself. The boy I mean is David Hedges.

2. Cross-int. Where was the chief officer when the collision occurred?

Answer. I saw the chief officer at the minute that I jumped out from under the bridge. He was then on the bridge. I cannot say where he was when the collision occurred.

3. Cross int. Was there any one on deck after four o'clock except those you have mentioned as being on the watch?

Answer. The pilot, and that was all.

4. Cross-int. Did you give the order to Hedges to trim the lights?

Answer. No.

5. Cross int. When did you first notice Hedges with the lamps, and where were you when you first noticed him trimming the lamps?

Answer. At four o'clock, on the main deck, when he first took them out of the screen to take them to the lamp-room. I was at the time on the main deck, standing abreast of the main rigging.

6. Cross-int. Did Hedges take all three lamps down when he trimmed them, the mast-head as well as the other two?

Answer. He took the two side-lights down by himself, and was

50 assisted by me with the mast-head light.

7. Cross-int. Which was taken down first?

Answer. The starboard light, and next the port light, and the mast-head light the last.

8. Cross-int. State now to the commissioner all that you saw Hedges do from the time he took down the first light until he put them all up, and state where you were all that time.

Answer. I saw him take every lamp into the lamp-room, one at a time, and I stood at the lamp-room door and saw him trim them. He put the side-lights in the screens himself, and was assisted by me to put up the mast-head light.

9. Cross-int. Did you go into the lamp-room while this was going on?

Answer. No; I stood at the door.

10. Cross-int. Where is the lamp-room door, and how far is it from the places where the side-lights are put?

Answer. The door is under the bridge, about forty feet from where the lights are put.

11. Cross-int. What is the location of the mast where the mast-head light is put, as to the lamp-room, how far distant is it?

Answer. It is about thirty-eight feet from the lamp-room door to the foot of the mast where the mast-head light is put, and the mast-
51 head light is about thirty-two feet from the main deck.

12. Cross-int. I understand you, then, that Hedges took down the starboard light, took it to the lamp-room, trimmed it, put oil in it, and replaced it all himself, and that he did the same with the other side-light, and that afterwards you helped him down with the mast-head light, took it to the lamp-room, filled it with oil, trimmed it, replaced it, and that you helped him to replace it; is this so?

Answer. Yes.

13. Cross-int. Did Hedges or you do anything else except what has been stated in the preceeding question in trimming the lights? If anything else was done, state what was done by him or you.

Answer. I did nothing myself, and I did not order him to do anything.

14. Cross-int. Hedges, in his examination, stated that he put relieving-lights in the place of those he took down; did you see him do anything of the kind?

Answer. I saw him take the relieving-light along the deck.

15. Cross-int. Was there one relieving-light, or more?

Answer. One relieving-light to show the red, white, and green.

16. Cross-int. How long did it take Hedges and you to do all that you have described about the lights?

52 Answer. About eight or nine minutes.

17. Cross-int. When did you see Hedges last before the collision, and where?

Answer. I never saw him after that until after the collision.

18. Cross-int. Where was it Hedges' duty to be after he had trimmed the lights?

Answer. It was his leisure time; there was no exact place for him to be.

19. Cross-int. Did you direct him to clean any cargo-lamps then, at that time?

Answer. No.

20. Cross-int. When did you begin with Hedges to take these lamps down, and how do you fix eight or nine minutes as the time you were engaged in trimming and replacing the lamps?

Answer. We commenced at four o'clock, and I just guessed the time it took us.

21. Cross-int. Did you come the moment you were called to keep your watch, or was there some interval between the time of your being called and getting on deck?

Answer. Ten minutes before four we are called, and at four eight bells are struck, and before the sound of the bell ceased I was on deck.

22. Cross-int. Did the first officer come with you? If not, when did he come on deck?

53 Answer. I could not say. I took no notice when he came on deck.

23. Cross-int. What was the first thing you did after you came on deck?

Answer. Stood on deck and saw Hedges bring the lamps along.

24. Cross-int. Did you then go with him to the lamp-room and stay there, as you have described?

Answer. I did.

25. Cross-int. In answer to the 13th int.-in-chief, you state that you always make it a practice to see about the lookout when you come on watch; didn't you do this before you went to the lamp-room?

Answer. No, sir; I did it when I came forward with the starboard lamp.

26. Cross-int. How long after the lamps were put up was it that you heard the pilot sing out, "Put your helm up?"

Answer. I could not say. I took no notice of the time.

27. Cross-int. Whom did the pilot sing out this to?

Answer. I could not say.

28. Cross-int. Where were you then, and where was the pilot?

Answer. I was standing under the bridge, and from the tone
54 of the pilot's voice he was standing on the bridge.

SAMUEL THAXTER.

Subscribed and sworn to before me this 18th day of October, A. D. 1872.

ROBT LYON ROGERS,
U. S. Commissioner.

ROBERT T. MACGARR, being duly sworn according to law to testify the whole truth, and being examined in behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and occupation?

Answer. My name is Robert T. Macgarr. My age is forty-nine years, and I am a master-mariner. I have been going to sea for the past thirty-five years.

2. Int. Were you the master of the steamship Carolina, owned by Joseph Good, of Hull, England, upon a voyage from the port of Baltimore to *to* Queenstown, Ireland, on the 3rd day of October, A. D. 1872?

Answer. I was.

2. Int. Please state where you were and what you were doing between four and five o'clock of the morning of said 3rd day of October.

Answer. I was below in the saloon, lying down, until the time of the collision, as the ship was in charge of the pilot, and my services were not required on deck. I asked him particularly if my services
55 were required before I went below.

3. Int. Will you state when you first went on deck on said morning, and generally what you saw and did upon going on deck? Please state all that happened in connection with said collision, as far as the same came under your observation.

Answer. I heard something strike the ship, and I instantly ran on deck. The first thing I saw was a three-masted schooner, with her sails all shaking in the wind, about fifteen yards from us on the port side. I could see by the position of the two ships that there had been a collision. I ran forward to see what had been done, as some one was singing out to clear away the boats. I found that the schooner had run into us amidships, cutting us down nearly to the water's edge, as I first thought on seeing it in the dark. I ordered the carpenter to sound the pumps at once. I asked the pilot if he knew the name of the schooner and where she was bound to. He did not know anything about it. I ordered him to run after the schooner to see if I could get her name, which we did, and finding the ship making too much water, I ordered her to the nearest port, for the safety of the ship and cargo.

4. Int. Will you state how the schooner was heading, as to the steamer, when you first saw her after the collision?

56 Answer. She was laying with her head nearly in the same direction as the steamer's was, with her sails all shaking.

5. Int. Do you know how the steamer was then heading?

Answer. She was heading about southwest-westerly, going off all the time, as her helm was hard aport.

6. Int. How was the weather and wind, and how was the sea, when you first went on deck?

Answer. There was a strong breeze, fine, clear weather, and the wind was about southwest. There was a strong swell.

7. Int. Did you see or hear anybody on board of the schooner, or were you able to overtake her or ascertain her name at that time?

Answer. I neither saw nor heard any one on the schooner, and could not overtake her or ascertain her name at that time.

8. Int. Where did the steamer then proceed, and where is she now, and what is she doing?

Answer. She proceeded to Norfolk, Virginia, being the nearest port, and she was ordered from Norfolk to Baltimore by the underwriters, for repairs, and is now in the port of Baltimore repairing.

9. Int. Will you state when said steamer first left Baltimore on the voyage on which said collision occurred, whither bound, and what cargo, by whom owned, her class, build, capacity of engines, and usual rate of speed; and whether or not you know if she was going at her

57 usual rate of speed before and at the time of the collision?

Answer. The steamer left Baltimore on that voyage on the 2nd of October at 6 a. m., in charge of a duly-licensed pilot, whose name, I believe, was Evans. She was bound to Queenstown, Ireland, for orders; her cargo was corn in bulk; her rate is A 1, Liverpool Lloyds, eighteen years; she was British-built, of iron, and was a screw-propeller. The capacity of her engines was a hundred and forty horse-power, and her engines were compound engines. Her usual average rate of speed in fine weather was about eight knots. I cannot say whether she was going at her usual rate of speed at the time of the collision, as I was not on deck. She was owned by Joseph Good, of Hull, England.

(It is here agreed by the proctors of the respective parties that the description of the vessel as the same is given in the Mercantile Navy List and Maritime Directory for 1872, compiled by John J. Mayo, esq., registrar-general of shipping and seamen for Great Britain, shall be read in evidence at the trial of this cause, and a copy of the ship's register, the original of which is now produced by the witness under examination, it is agreed may be dispensed with.)

10. Int. Will you describe the lamps on board of said steamship

58 used as mast-head and starboard and port lights, how and where placed, and whether the same conformed to the regulation standard of Great Britain?

Answer. The mast-head light is a bright white light; the starboard is a green one, and the port light a red one; the three lights placed by the foremast to form a triangle. The mast-head light is placed on the foremast-head, about thirty feet above the deck of the top-gallant forecastle, the foremast being about fifty feet from the stem of the ship. The green light placed on the starboard side in a screen fitted by the Board of Trade regulations, and the red light in a similar screen on the port side. All three lights passed and approved of by the Board of Trade surveyor in April last; I mean the Board of Trade of Great Britain.

11. Int. Have you any other lamp, or lamps, on board of said ship,

used for the same purpose? If so, describe the same, and state how and when they are used.

Answer. We have a relieving-lamp to be used when the regulation lights are taken in to be trimmed. By my order only one regulation light to be taken in at a time, and then a relieving-light to be put in its place. The relieving-lamp has three screens to it, a white light, a red light for the port side, and a green light for the starboard side. This relieving-lamp is also approved by the British Board of Trade.

59 Cross-examination:

1. Cross-int. Is this relieving-lamp prescribed in any act of Parliament, and if so in what act, if you know?

Answer. I do not know.

2. Cross-int. How long have you been connected with this steamer, and how long have you used this relieving-lamp on board of her?

Answer. I have been master of this steamer for sixteen months, and have used the lamp during this time, and I have been connected with steamers for the past twelve years, and have used on them relieving-lamps similar in character.

3. Cross-int. Describe, according to your regulation, the course to be pursued by a seaman who is ordered to trim the lamps. State particularly what he should do if your orders are obeyed.

Answer. My order is that they shall be properly trimmed, put out at sunset, not taken in *whilst* the sun rises, and duly attended to and properly kept burning all night, and when any one is taken in, the relieving-lamp to be put in its place whilst that lamp is in being trimmed.

R. T. MACGARR.

Subscribed and sworn to before me this 19th day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

60 Re-examined by proctor for libellants:

12. Int. State, if you can, what are the expenses of the steamship Carolina per day during her present detention in the port of Baltimore, independently of the costs of the repairs now being put upon her; give, as far as you can, the items of expense.

Answer. The expenses are seventy pounds sterling per day. Our actual working expenses are forty-three pounds sterling, and by our English law we are allowed one-third per day above our actual expenses, which will bring it to about seventy pounds. I include all actual expenses, as follows: insurance, victuals, and wages, consumption of coals, oil for engines, *ware* and tear of engines and rigging, &c., and the depreciation of the value of the ship because of the collision. When I say insurance, I mean insurance of the ship and freight.

13. Int. What do the wages of the men and officers amount to per day?

Answer. I cannot state without reckoning them up. The wages average from twenty pounds a month to six pounds a month.

14. Int. State, if you can, what are the expenses of the steamship Carolina per day during her present detention in the port of Baltimore, independently of the costs of repairs now being put upon her; give, as far as you can, the items of expense.

61 Answer. I wish to correct the answer which I made to this same question, as I understood it to refer to the actual working

expenses at sea, and not in port. I am fully prepared, as I have gone into figures, to give my port expenses.

15. Int. State, then, if you please, what the wages of master and crew amount to per day, how many men compose the crew, and at what rate of wages employed.

Answer. There are twenty-seven men all told officers. Our respective wages, or rather aggregate wages for one month, are one hundred and sixty eight pounds ten shillings. I was mistaken when I said the average wages was from twenty pounds to six pound'. The lowest is three pounds ten shillings.

16. Int. State how the officers and crew of said steamship have been subsisted during her present detention at this port in consequence of the collision, and if they have been boarded, how much their board has amounted to per day.

Answer. From the cook-house having been carried away by the collision, I have had to subsist my crew on shore. Myself and wife are at six dollars a day. Sometimes I dine at Rennert's, and at other times where I think proper. The two mates and three engineers subsist at two dollars and fifty cents a day each. I do not know the board-
62 ing-house at which they are at. I have not yet received the bill of the boarding-house keeper or hotel-keeper. The carpenter, cook, and boatswain, and two stewards, are at two dollars a day each; fifteen firemen, seamen, and ordinary seamen at a dollar and fifty cents a day.

17. Int. If there are any other expenses, exclusive of the cost of repairs which have been incurred by said steamship, during and in consequence of her said detention, state, if you can, what they are and how much they amount to per day.

Answer. The insurance on the ship and on the freight; shipping-master employed to keep men from deserting; coal used for the use of the donkey-engine; oil and waste used per day to keep the engines in order. The insurance on my vessel is eighteen thousand pounds, but I do not know the rate, but at my calculation at twelve per cent. per annum, it might be more, I can't say; it would amount to one hundred eighty pounds per month. The insurance on the freight of eighteen hundred pounds sterling, which is less than I have in, at one and a quarter per cent., as I have calculated, but what it is exactly I do not know, amounts to four dollars and thirty-three cents per day. The shipping-master, to keep men from deserting, is five dollars per day; coal for the use of the donkey-engine is four hundred pounds weight of coal per day to get steam up, and to keep the steam up all the
63 day through it take' from two to two and a half tons per day, and the price we paid for coal here is six dollars per ton, delivered on board. The oil and waste for keeping engines in order costs nine dollars and sixty-two cents. We use five gallons of oil every day, and ten pounds of waste. Our wharfage per day is a cent per day on our registered tonnage, which is eight hundred tons British measurement.

18. Int. State on what day the said steamship arrived here after said collision.

Answer. On the 5th day of October, A. D. 1872.

19. Int. State, if you know, what freight said steamship would have earned upon her said voyage from Baltimore to Queenstown, on which said collision occurred, if said port of Queenstown was the termination of her said voyage; if not upon the termination of the voyage, whenever and wherever completed.

Answer. My voyage was from Baltimore to Queenstown for orders, and I can't tell where I would have gone from there, and from *their* to any port in the United Kingdom as per certain limit in the charter-party. She would have earned her full freight when she is put in the place where the collision occurred. She would have earned eighteen hundred and eighteen pounds.

20. Int. What is the stipulation in the charter-party upon the subject of freight on said voyage from Baltimore?

Answer. It is seven and sixpence per quarter.

64 21. Int. State when and where said freight was payable, and what cargo she had on board.

Answer. I had a cargo of corn on board, and the freight was payable on the delivery of that cargo, before or after I liked to draw it, and the ship's expenses. I have on board between four and five thousand quarters, and it may be more.

Recross-examination:

4. Cross-int. Do you mean the galley when you say the cook-house was carried away? If not, what do you mean when you say cook-house?

Answer. I mean the galley and cook-house—both one and the same expression.

5. Cross-int. What do you mean when you say it was carried away by the collision?

Answer. It was knocked away and started from the deck.

6. Cross-int. How far is the galley from the side of the vessel which was struck by the schooner?

Answer. The port side of the galley would be about six or eight feet from the side and three feet abaft of where the vessel struck us. The galley is in the middle of the ship.

7. Cross-int. How long did it take you to put the galley in its
65 place and fasten it down after the shock, as you have described, by collision with the schooner?

Answer. *The* day is the first day we could cook in it since the day we arrived here, and then not to cook for the whole crew.

8. Cross-int. Why was this delay in the use of the galley; state who repaired it, if it needed repairs, and state what would be the cost of such galley new here.

Answer. One end of it was iron and had to be fitted up by a machinist. There were three men who made the repairs—I do not know their names, but I think the name of the machinist was Codd. I can't say what would be the cost of the galley new here. I don't know.

(Proctor for respondents here gives notice to produce the bill for the repairs of the galley.)

9. Cross-int. Do you mean to say that you and all your men have discontinued your stay on board the ship, since your arrival in Baltimore? If not, state if you mean that you and they remain on board and get your meals out.

Answer. We board on shore, all of us; carpenter, boatswain, engineers, steward, cook, lodge on shore, as theirs berths are knocked away by the collision, and have to be fitted up.

66 10. Cross-int. State whether or not you could not have *have* made temporary provision to board all the men on the vessel; and if you did not, why not

Answer. I could not, because I can't remove my cooking-apparatus anywhere. All the deck was off and the end out of the cook-house for the purpose of repairs. There was no possible means of doing such a thing.

11. Int. Where are you insured, and state who in this city represents the insurance company.

Answer. I am insured in the Steamship Association, and no one represents it in this city but myself. They have no agents here.

12. Int. Who has been making out your insurance-papers—what broker or other person?

Answer. No one yet, as I have got none of my bills in yet to have them made out.

13. Int. Did you make a protest on your arrival here? If you did, before whom?

Answer. I made two, one before the British consul, and one before Mr. Hodges, the notary. Mr. Norris made out the papers.

14. Int. What do you mean by the donkey-engine, and why were you working it all day since you have been repairing the vessel?

Answer. I mean by the donkey-engine, an engine that we use for discharging cargo, pumping the ship out, or any other necessary jobs that may be required. We always keep steam in it when in port.

67 15. Int. Do you mean to say that you have used five gallons of oil and ten pounds of waste every day on the donkey-engine since you have been in port?

Answer. No; I do not mean to say that it was used on the donkey-engine; I mean on the main engines of the ship. When at sea the consumption of oil is fifteen gallons a day *when at sea* and the engines are at work.

R. T. MACGARR.

Subscribed and sworn to before me this 23rd day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

HENRY POPE, being duly sworn according to law to testify the whole truth, and being examined on behalf of the respondents, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and your occupation?

Answer. My name is Henry Pope; I am thirty-three years of age; I go to sea for a living, and have been going to sea for nineteen years.

2. Int. Were you on board the schooner Stephen Morgan on the morning of the 3rd of October, A. D. 1872, on a voyage from New York to Georgetown, in the District of Columbia?

Answer. I was.

68 3. Int. State what you were doing between four and five o'clock of the morning of that day; state who was on deck with you and what they were doing, and state all that you saw and did that has any bearing upon the collision that subsequently took place?

Answer. I was keeping lookout. My watch began at four o'clock, and I went on the lookout when my watch began. The mate was on deck in charge of the deck, and one man at the wheel. About twenty minutes after four o'clock, I think it was, but I can't say exactly, I saw a very bright light on our starboard bow about a point or a point and a half. I looked around aft and was going to report it to the mate. I saw the mate standing with the glasses looking at it already, and I heard him speak, and I thought it was to the man at the helm. So I looked ahead again and I saw our vessel coming to the wind, which was about abeam, and then shortly after that I could make out that it was a vessel which I thought was at anchor. I could not see any other light than one.

Then we got further along, and I made out to see that she was a steamer. Still I did not know whether she was under steam or was at anchor, but I soon found out that she was under way by the quickness with which the two vessels came together. The next was our sails were shaking, and we hit her somewhere abaft the fore rigging, about amidships. We soon got clear of her, and the steamer went on his way. After that the captain and mate all came forward, and the watch came up from
69 below and went forward to have a look what damage had been done. Then we shortened sail. Then we went down and had a look to see whether she made much water. The water was running in her pretty freely. So the captain gave orders to keep her before the wind, so as to keep the water from running in so fast. We run before the wind, but how long I can't say, and then we came to anchor, and the captain went in the boat to stop some of the leaks, and after he had done that we hove the anchor up again and made sail for Baltimore.

4. Int. When you first discovered the light, how far do you think the schooner was off from it?

Answer. I could not say exactly, but I think it was about a mile or a mile and a half.

5. Int. You say you saw a bright light; was this the mast-head light of the steamer that you afterwards came in collision with?

Answer. Yes.

6. Int. Did you see the steamer's red light at any time from the time you first saw the bright light until you lost sight of the steamer; and say if you looked to see her red light as soon as you discovered that she was a steamer?

Answer. I never saw any other light than the bright light from the time I first saw it until the steamer was out of sight again. I was looking for her lights, but I could not see them, and I thought it was
70 rather strange that a steamer should have no side-lights out.

7. Int. Where were you standing when you first saw the bright light?

Answer. I was standing on the lee side on the forecastle.

8. Int. Are you sure that the light when you first saw it was on your starboard bow?

Answer. Yes; I am quite sure.

9. Int. Did that light always continue to be seen by you on your starboard bow up to the time of the collision?

Answer. Yes; it was always on the starboard bow.

10. Int. Did you watch it particularly from the time you first saw it?

Answer. I did.

11. Int. Did you observe the lights of the schooner from the time you came upon the watch and at any time afterwards? State all you observed particularly, and anything you had to do with the lights.

Answer. When I came on deck the lights were burning bright and were in the'*re* proper places, and I saw them taken down at daylight, and they were still burning bright.

12. Int. Do you think it possible that those on board the steamer could see the schooner's red light as you were heading when you first saw the bright light, or at any time afterwards?

71 Answer. No; I don't think they could have seen it at all. The steamer was on our lee bow; they might have seen the green light, but I don't think they could have seen the red one.

Cross-examination:

1. Cross-int. How do you know how the schooner was heading when you first saw the bright light about twenty minutes past four if you were not at the helm?

Answer. I do not know how the schooner was heading.

2. Cross-int. How was the schooner rigged and under what sail was she at twenty minutes past four o'clock?

Answer. She was rigged like any other three-masted schooner. I believe at twenty minutes past four o'clock we had all the sail on her that she could carry.

3. Cross-int. How was the wind?

Answer. The wind was about abeam, and there was a strong breeze.

4. Cross-int. Was the schooner light or in ballast, or was there a cargo on board?

Answer. We were light.

5. Cross-int. How many knots do you suppose she was going at twenty minutes past four?

72 Answer. I could not say exactly, but I think she was going eight knots or thereabouts.

6. Cross-int. How was the weather?

Answer. The weather was clear and fine.

7. Cross-int. How far off could you see a bright mast-head light, forty feet above the water in fine, clear weather, such as it was that morning?

Answer. That is what I can't tell, how far I could see it, but I should think I could see a bright light a mile and a half or a mile and three-quarters.

8. Cross-int. Do you mean to say that you can't see in fine, clear weather a steamer's mast-head light brightly burning more than a mile and a half or a mile and three-quarters?

Answer. No; I don't think I could see it further than that on that morning. It was clear, but there was a kind of haze that morning.

9. Cross-int. How far off can you see a red or green light of a steamer properly burning in fine, clear weather?

Answer. If it is real clear weather, no haze about it, I suppose I could see it about a mile and a half, so that I could make out what it is.

10. Cross-int. Do you mean to say that you could see in fine, clear weather, or any kind of weather, a steamer's red or green lights placed twelve feet above the water, as far as you could see her bright mast-head light placed forty feet above the water?

73 Answer. No, I don't mean to say that I could see them that far. If it is a hazy night I can't see the side-lights of a steamer so far. I cannot see the side-lights as far as I can see the mast-head light.

11. Cross-int. Why did you say, then, that you could not see the steamer's mast-head light as described farther than a mile and a half or a mile and three-quarters, and that you could see a steamer's red or green lights a mile and a half in the same weather?

Answer. I did not say that I could see the mast-head-light no farther than I could see the side lights.

12. Cross-int. I put the question again; you say you have been following the sea for nineteen years; how far can you see, in fine clear weather, a steamer's bright mast-head light placed forty feet above the water?

Answer. Well, I suppose in fine clear weather I could see it further than a mile and a half. I don't know exactly how far I can see it, but I don't think I could see it further than a mile and three-quarters.

Then we got further along, and I made out to see that she was a steamer. Still I did not know whether she was under steam or was at anchor, but I soon found out that she was under way by the quickness with which the two vessels came together. The next was our sails were shaking, and we hit her somewhere abaft the fore rigging, about amidships. We soon got clear of her, and the steamer went on his way. After that the captain and mate all came forward, and the watch came up from
69 below and went forward to have a look what damage had been done. Then we shortened sail. Then we went down and had a look to see whether she made much water. The water was running in her pretty freely. So the captain gave orders to keep her before the wind, so as to keep the water from running in so fast. We run before the wind, but how long I can't say, and then we came to anchor, and the captain went in the boat to stop some of the leaks, and after he had done that we hove the anchor up again and made sail for Baltimore.

4. Int. When you first discovered the light, how far do you think the schooner was off from it?

Answer. I could not say exactly, but I think it was about a mile or a mile and a half.

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Answer. Yes.

6. Int. Did you see the steamer's red light at any time from the time you first saw the bright light until you lost sight of the steamer; and say if you looked to see her red light as soon as you discovered that she was a steamer?

Answer. I never saw any other light than the bright light from the time I first saw it until the steamer was out of sight again. I was looking for her lights, but I could not see them, and I thought it was
70 rather strange that a steamer should have no side-lights out.

7. Int. Where were you standing when you first saw the bright light?

Answer. I was standing on the lee side on the forecastle.

8. Int. Are you sure that the light when you first saw it was on your starboard bow?

Answer. Yes; I am quite sure.

9. Int. Did that light always continue to be seen by you on your starboard bow up to the time of the collision?

Answer. Yes; it was always on the starboard bow.

10. Int. Did you watch it particularly from the time you first saw it?

Answer. I did.

11. Int. Did you observe the lights of the schooner from the time you came upon the watch and at any time afterwards? State all you observed particularly, and anything you had to do with the lights.

Answer. When I came on deck the lights were burning bright and were in the'*re* proper places, and I saw them taken down at daylight, and they were still burning bright.

12. Int. Do you think it possible that those on board the steamer could see the schooner's red light as you were heading when you first saw the bright light, or at any time afterwards?

71 Answer. No; I don't think they could have seen it at all. The steamer was on our lee bow; they might have seen the green light, but I don't think they could have seen the red one.

Cross-examination:

1. Cross-int. How do you know how the schooner was heading when you first saw the bright light about twenty minutes past four if you were not at the helm?

Answer. I do not know how the schooner was heading.

2. Cross-int. How was the schooner rigged and under what sail was she at twenty minutes past four o'clock?

Answer. She was rigged like any other three-masted schooner. I believe at twenty minutes past four o'clock we had all the sail on her that she could carry.

3. Cross-int. How was the wind?

Answer. The wind was about abeam, and there was a strong breeze.

4. Cross-int. Was the schooner light or in ballast, or was there a cargo on board?

Answer. We were light.

5. Cross-int. How many knots do you suppose she was going at twenty minutes past four?

72 Answer. I could not say exactly, but I think she was going eight knots or thereabouts.

6. Cross-int. How was the weather?

Answer. The weather was clear and fine.

7. Cross-int. How far off could you see a bright mast-head light, forty feet above the water in fine, clear weather, such as it was that morning?

Answer. That is what I can't tell, how far I could see it, but I should think I could see a bright light a mile and a half or a mile and three-quarters.

8. Cross-int. Do you mean to say that you can't see in fine, clear weather a steamer's mast-head light brightly burning more than a mile and a half or a mile and three-quarters?

Answer. No; I don't think I could see it further than that on that morning. It was clear, but there was a kind of haze that morning.

9. Cross-int. How far off can you see a red or green light of a steamer properly burning in fine, clear weather?

Answer. If it is real clear weather, no haze about it, I suppose I could see it about a mile and a half, so that I could make out what it is.

10. Cross-int. Do you mean to say that you could see in fine, clear weather, or any kind of weather, a steamer's red or green lights placed twelve feet above the water, as far as you could see her bright mast-head light placed forty feet above the water?

73 Answer. No, I don't mean to say that I could see them that far. If it is a hazy night I can't see the side-lights of a steamer so far. I cannot see the side-lights as far as I can see the mast-head light.

11. Cross-int. Why did you say, then, that you could not see the steamer's mast-head light as described farther than a mile and a half or a mile and three-quarters, and that you could see a steamer's red or green lights a mile and a half in the same weather?

Answer. I did not say that I could see the mast-head-light no farther than I could see the side lights.

12. Cross-int. I put the question again; you say you have been following the sea for nineteen years; how far can you see, in fine clear weather, a steamer's bright mast-head light placed forty feet above the water?

Answer. Well, I suppose in fine clear weather I could see it further than a mile and a half. I don't know exactly how far I can see it, but I don't think I could see it further than a mile and three-quarters.

13. Cross-int. How far, at twenty minutes after four of the morning of the collision, in the kind of weather of that morning, do you think you could make out a steamer's red or green side-lights?

Answer. About three-quarters of a mile or a mile, I should say.

74 14. Cross-int. What made you think it was a vessel riding at anchor when you first saw the steamer's light?

Answer. As I saw the steamer's light first, I did not think it was a vessel riding at anchor, but I soon saw the vessel itself, and then, as I only saw this bright light, I thought it was a vessel at anchor.

15. Cross-int. How long was it after you saw the bright light before you made out the vessel as you say, and how far off was she from the schooner when you so made her out?

Answer. I can't state exactly the time after I saw the light before I made out the vessel, but I suppose it was between five and ten minutes, and I can't tell how far she was off from the schooner when I made her out.

16. Cross-int. How far off do you think she was?

Answer. I can't say how far off she was.

17. Cross-int. If you can't tell how far the steamer was off when you first saw her, how can you tell how far her light was off when you first saw it?

Answer. I had more time to look at the light and to think about—but when I saw the steamer I could see we were getting pretty close, and I can't say how far she was off. I was kind of flurried like.

18. Cross-int. You did not see the steamer, then, until just before you ran into her and when you were in too much of a flurry to esti-

75 mate the distance; is that correct?

Answer. I saw the steamer before we run into her, but I can't say how long before.

19. Cross-int. When did you first make out that the steamer was in motion, and how did you know her to be a steamer?

Answer. Well, I made the steamer out as soon as I saw her funnel or smoke-stack, as you call it.

20. Cross-int. You have stated that when you first saw the steamer's light it was about a point or a point and a half on your starboard bow, which was your lee bow; that you looked aft to report it to the mate, and that when you looked again you saw your schooner coming to the wind; how many points on your lee bow did that bring the steamer's light?

Answer. Well, about two points and a quarter, I should think; it might be two points and a half. I can't say exactly. I had no compass.

21. Cross-int. Did the schooner continue to come to after you first observed her head coming up to the wind?

Answer. No, she stopped a little and then she come to again.

22. Cross-int. After she came to the second time what was the direction of the steamer's light from the schooner?

Answer. Well, about three points and a quarter.

76 23. Cross-int. Did the schooner still keep coming round to the wind after she came to the second time, and how long was this before the collision?

Answer. No, she didn't keep coming to. She stopped again. I could say how long it was, but it was not long before the collision after she came to the second time; I can't say how many minutes.

24. Cross-int. Where was the mate standing when you saw him looking through the glasses at the steamer's light just before the schooner came to the wind the first time?

Answer. He was standing aft, to leeward of the spanker-boom, standing against the rail.

25. Cross-int. In which direction was the mate looking and how far off was he from where you were standing?

Answer. The mate was looking in the direction of the bright light I saw. I should suppose the mate was standing sixty feet from me. I don't think it was any less, it might have been more, I can't say.

Re-examination:

13. Int. Did you hear the steamer blow a whistle at any time on that morning before the collision?

Answer. No, I did not.

HENRY POPE.

77 Subscribed and sworn to before me this 19th day of October A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

PAUL WOLFE, being duly sworn according to law, to testify the whole truth, and being examined on behalf of the respondents, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and occupation?

Answer. My name is Paul Wolfe; my age is thirty-one years, and I am a seaman, and have been for the past eighteen years.

2. Int. Were you on board the schooner Stephen Morgan on a voyage from New York to Georgetown, in the District of Columbia, on the 3rd of October, A. D. 1872; and if so, in what capacity were you on board said schooner?

Answer. I was on board the schooner Stephen Morgan at the time spoken of, and I was an able seaman.

3. Int. State what you were doing between four and five o'clock of the morning of that day, and who was in the watch with you, and what were they doing.

Answer. I came on deck at four o'clock and went aft to relieve the man at the wheel. The first mate had charge of the deck and was walking about aft on the quarter-deck. A seaman, Henry Pope, was on the lookout on the top-gallant forecastle.

78 4. Int. How was the wind, the weather, and the sea; what sails were set on the schooner, and on what tack was she; what was the size of the schooner and how was she loaded?

Answer. The wind was about west-southwest, and a fine breeze; the weather was fine, clear overhead but rather hazy on the water. The sea was neither rough nor smooth. We had all sail set except the *gib* topsail. The schooner was on the port tack. She was between two and three hundred tons burden, and she was empty.

5. Int. What was the course of the schooner when you took the wheel, how was it changed before you saw the steamer's light, and what was the course then?

Answer. When I took the wheel the course of the schooner was north by west ½ west; about ten minutes after four o'clock it was changed by order of the mate to north by west, and this was before I saw the steamer's light.

6. Int. When did you first see the steamer's light, how did it bear from the schooner, and what was its distance, and who first called your attention to it? and state what orders the mate gave you after the light was discovered.

13. Cross-int. How far, at twenty minutes after four of the morning of the collision, in the kind of weather of that morning, do you think you could make out a steamer's red or green side-lights?

Answer. About three-quarters of a mile or a mile, I should say.

74 14. Cross-int. What made you think it was a vessel riding at anchor when you first saw the steamer's light?

Answer. As I saw the steamer's light first, I did not think it was a vessel riding at anchor, but I soon saw the vessel itself, and then, as I only saw this bright light, I thought it was a vessel at anchor.

15. Cross-int. How long was it after you saw the bright light before you made out the vessel as you say, and how far off was she from the schooner when you so made her out?

Answer. I can't state exactly the time after I saw the light before I made out the vessel, but I suppose it was between five and ten minutes, and I can't tell how far she was off from the schooner when I made her out.

16. Cross-int. How far off do you think she was?

Answer. I can't say how far off she was.

17. Cross-int. If you can't tell how far the steamer was off when you first saw her, how can you tell how far her light was off when you first saw it?

Answer. I had more time to look at the light and to think about—but when I saw the steamer I could see we were getting pretty close, and I can't say how far she was off. I was kind of flurried like.

18. Cross-int. You did not see the steamer, then, until just before you ran into her and when you were in too much of a flurry to esti-

75 mate the distance; is that correct?

Answer. I saw the steamer before we run into her, but I can't say how long before.

19. Cross-int. When did you first make out that the steamer was in motion, and how did you know her to be a steamer?

Answer. Well, I made the steamer out as soon as I saw her funnel or smoke-stack, as you call it.

20. Cross-int. You have stated that when you first saw the steamer's light it was about a point or a point and a half on your starboard bow, which was your lee bow; that you looked aft to report it to the mate, and that when you looked again you saw your schooner coming to the wind; how many points on your lee bow did that bring the steamer's light?

Answer. Well, about two points and a quarter, I should think; it might be two points and a half. I can't say exactly. I had no compass.

21. Cross-int. Did the schooner continue to come to after you first observed her head coming up to the wind?

Answer. No, she stopped a little and then she come to again.

22. Cross-int. After she came to the second time what was the direction of the steamer's light from the schooner?

Answer. Well, about three points and a quarter.

76 23. Cross-int. Did the schooner still keep coming round to the wind after she came to the second time, and how long was this before the collision?

Answer. No, she didn't keep coming to. She stopped again. I could say how long it was, but it was not long before the collision after she came to the second time; I can't say how many minutes.

24. Cross-int. Where was the mate standing when you saw him looking through the glasses at the steamer's light just before the schooner came to the wind the first time?

Answer. He was standing aft, to leeward of the spanker-boom, standing against the rail.

25. Cross-int. In which direction was the mate looking and how far off was he from where you were standing?

Answer. The mate was looking in the direction of the bright light I saw. I should suppose the mate was standing sixty feet from me. I don't think it was any less, it might have been more, I can't say.

Re-examination:

13. Int. Did you hear the steamer blow a whistle at any time on that morning before the collision?

Answer. No, I did not.

HENRY POPE.

77 Subscribed and sworn to before me this 19th day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

PAUL WOLFE, being duly sworn according to law, to testify the whole truth, and being examined on behalf of the respondents, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and occupation?

Answer. My name is Paul Wolfe; my age is thirty-one years, and I am a seaman, and have been for the past eighteen years.

2. Int. Were you on board the schooner Stephen Morgan on a voyage from New York to Georgetown, in the District of Columbia, on the 3rd of October, A. D. 1872; and if so, in what capacity were you on board said schooner?

Answer. I was on board the schooner Stephen Morgan at the time spoken of, and I was an able seaman.

3. Int. State what you were doing between four and five o'clock of the morning of that day, and who was in the watch with you, and what were they doing.

Answer. I came on deck at four o'clock and went aft to relieve the man at the wheel. The first mate had charge of the deck and was walking about aft on the quarter-deck. A seaman, Henry Pope, was on the lookout on the top-gallant forecastle.

78 4. Int. How was the wind, the weather, and the sea; what sails were set on the schooner, and on what tack was she; what was the size of the schooner and how was she loaded?

Answer. The wind was about west-southwest, and a fine breeze; the weather was fine, clear overhead but rather hazy on the water. The sea was neither rough nor smooth. We had all sail set except the *gib* topsail. The schooner was on the port tack. She was between two and three hundred tons burden, and she was empty.

5. Int. What was the course of the schooner when you took the wheel, how was it changed before you saw the steamer's light, and what was the course then?

Answer. When I took the wheel the course of the schooner was north by west ½ west; about ten minutes after four o'clock it was changed by order of the mate to north by west, and this was before I saw the steamer's light.

6. Int. When did you first see the steamer's light, how did it bear from the schooner, and what was its distance, and who first called your attention to it? and state what orders the mate gave you after the light was discovered.

Answer. I first saw the light about twenty minutes past four o'clock, and it bore about north, and from north to ½ east from the schooner,
79 and was on her starboard bow about two points or two points and a half. I was distant a mile or two miles. I cannot state the distance exactly. The mate first called my attention to it and said, let the schooner luff a little, there was a vessel at anchor. I let her luff a point, which brought her to north-northwest, and then I saw the light.

7. Int. What lights did you observe in the steamer from first to last; had you a full view of her, and did you note particularly her lights; did you ever see her red light, and if she had had one burning brightly must you not have seen it?

Answer. I observed a bright light from first to last; I had a full view of the steamer and noted the lights particularly; I never saw her red light, and if she had had one burning brightly I would have seen it.

8. Int. When did you first discover the other vessel to be a steamer, and how did you make this discovery; did she sound her whistle or hail you that you heard?

Answer. I discovered the vessel to be a steamer about two or three minutes before the collision, and I made the discovery by seeing her smoke-stack. She neither sounded her whistle nor hail' us that I heard.

9. Int. Did you know whether or not she was under way or at anchor when you first saw her smoke-stack?

80 Answer. I thought she was at anchor.

10. Int. Describe the collision and all that took place between the time when you first saw the light and the collision, and state what was the course of the schooner at the time of the collision and where she struck the steamer.

Answer. When I saw the light I was steering north-northwest, and went that way for five or ten minutes, and then the mate ordered me to luff a little more, and I luffed her up a point that brought her up to northwest by north, and went that course about five minutes, and then the mate told me *told me* to luff a little more, when I made out that she was a steamer. All at once I saw that the steamer was coming right into us. The mate ordered me to port the helm, but just then the captain came up and told me to put the helm hard down. I was just beginning to heave the wheel up as the captain came on deck. He saw that she would not go off so as to clear the steamer, and ordered me to put the helm hard down, which I did, and she came right too, and the two vessels ran together. At the time of the collision the schooner was west by north ½ north. She struck the steamer somewhere abaft the fore-rigging.

11. Int. What was the injury to the schooner, and what was done on board your vessel after the collision?

81 Answer. The stem of the schooner was knocked to pieces and some of the planks were started. We kept the schooner before the wind and shortened sail. We went down to see what damage was done and tried the pumps. After seeing that she made a deal of water we went to anchor, and stopped up some of the holes. Then we lifted the anchor and came to Baltimore.

12. Int. Did you notice the schooner's lights before and after the collison? If so, state their condition, and state who took them down after the collision, and state their condition at that time.

Answer. I did not notice the lights of the schooner before the collision, but I did afterwards. About an hour and a half after the collision I took the lights down and they were burning brightly.

13. Int. Were you ever on board a British steamer as sailor? If so,

state when and for how long; and state whether such steamer had relieving lights.

Answer. I have been in five British steamers, and was in the last one about seven weeks ago. I was in them in all eighteen months. None of these steamers had relieving lights.

14. Int. Did you ever see a lantern like the one now exhibited to you, on board said steamers?

(It is admitted that the lantern now exhibited to the witness is a lantern produced by the master of the steamer Carolina, and which
82 the master of said vessel alleges is the relieving lantern used on said steamer, and the only one used thereon, and is the lantern produced in obedience to notice given during his examination as a witness in this case.)

Answer. I never saw such a lantern on board the steamers I was on. I never saw such a lantern before in my life.

15. Int. From the time you first saw the steamer's light until the collision, was it or not possible for those on board of the steamer to see the schooner's red light? If you say that it was not possible, state why it was impossible.

Answer. No, they could not see the red light of the schooner. They could not see across our bow. The steamer was on our starboard bow and the red light was on our port bow.

16. Int. From the time you saw the light to the time of the collision, was or was not the steamer always on your starboard bow?

Answer. She was always on our starboard bow.

Cross-examination:

1. Cross-int. Who do you say first called your attention to the steamer's light?

Answer. The mate.

83 2. Cross-int. What did the mate say to you; what orders did he give you, and what did you do?

Answer. The mate said, luff a little, there is a vessel at anchor on the lee bow. I luffed a point.

3. Cross-int. Did you yourself see the steamer's light before you luffed?

Answer. No.

4. Cross-int. How do you, then, know how the steamer was bearing when the mate first saw her, or do you know?

Answer. I do not know how she was bearing when the mate first saw her. I know how she was bearing when I first saw the light.

5. Cross-int. You have stated in answer to the 7th int.-in-chief that you never saw the steamer's red light, and if she had had one burning brightly you would have seen it; do you mean to say that you could see the red light of an approaching steamer bearing two points and a half on your starboard bow, or would you expect to see her red light; if you saw the side-light of an approaching steamer in that position, would it not have been her green light?

Answer. Yes; I should expect to see the steamer's green light.

6. Cross-int. Do you know whether the steamer was coming towards you or going away from you, or what was her general direction as to the schooner?

84 Answer. I thought she was laying at anchor.

7. Cross-int. Did you find out at any time that the steamer was under way?

Answer. Yes; about a minute or two before the collision.

8. Cross-int. When you did find out that she was under way, in what general direction did you find that she was going, and was she coming towards you or going from you?

Answer. She was coming right across our bow.

9. Cross-int. From which direction was she crossing your bow, as to the schooner?

Answer. From starboard to port.

10. Cross-int. How was the schooner's helm from the time the mate first told you to luff until he gave you the order to port the helm?

Answer. The helm was about amidships.

11. Cross-int. Was not the helm more to the starboard than to the port?

Answer. Well, I could not say exactly. I don't think it was more to the starboard. It may have been a spoke or two to port.

12. Cross-int. What did you do to the wheel when the mate ordered you to let the schooner luff?

Answer. I starboarded the helm two or three spokes.

13. Cross-int. What did you do to the wheel when the mate again ordered you to let her luff a little more?

85 Answer. After I luffed the first time I steadyed her a little by porting the helm a spoke or two, and then I starboarded the helm a spoke or two.

14. Cross-int. How was the schooner's helm at the moment of collision?

Answer. Hard astarboard.

Re-examination:

17. Int. If the steamer, when you first saw her bright light, was going upon a south-southwest course, and you saw her two points and a half on your starboard bow, what side-light of the steamer ought you to have seen if she had had one burning brightly?

Answer. I should have seen a red light.

18. Int. Did you ever see her green or red light from the time you first saw her bright light until you lost sight of the steamer?

Answer. I saw neither green nor red light.

19. Int. I will read to you the 5th cross-int. and your answer, and ask you to explain what you mean when you say I should expect to see the steamer's green light?

Answer. If the steamer was steering south by east, coming down the bay, & being two points and a half on our starboard bow, I should expect to see his green light.

86 Recross-examination:

15. Cross-int. Where was the mate standing when he first reported the steamer's light?

Answer. He was standing on the starboard side, on the poop-deck.

PAUL WOLFE.

Subscribed and sworn to before me this 19th day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

REDIN WORDEN, being duly sworn, according to law, to testify the whole truth, and being examined on behalf of the respondents, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and your occupation?

Answer. My name is Reddin Worden; my age is twenty four years;

and my occupation is following the water. I have been going to sea for about twelve years.

2. Int. Were you on board the schooner Stephen Morgan on the morning of the 3rd of October, 1872, and in what capacity were you on board?

Answer. I was on board the schooner Stephen Morgan on the 3rd of October, and was a foremast hand on board.

87 3. Int. Were you on the watch that ended at four o'clock on the morning of the collision? and if so, state what you were doing, and if you were at the wheel, state what course the schooner was steering when you left the watch.

Answer. I was on the watch that ended at four o'clock, and I steered the vessel till that time, and at that time the course of the schooner was north by west ½ west.

Cross-examination:

1. Cross-int. What were you doing after four o'clock, and where were you when the collision took place?

Answer. I went below. I was in my bunk when the collision took place.

REDIN WORDEN.

Subscribed and sworn to before me this 19th day of October, 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

ABRAM J. LETTS, being duly sworn, according to law, to testify the whole truth, and being examined on behalf of the respondents, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and your occupation?

Answer. My name is Abram J. Letts; my age is twenty-nine,
88 and I am a seaman; been going to sea about fourteen years.

2. Int. Were you on board the schooner Stephen Morgan on the 3rd day of October, 1872? If so, state in what capacity, and what were you doing between four and five o'clock of the morning of that day, and state who were on deck with you.

Answer. I was on board of her on that day, and was first mate of the schooner. I had charge of the deck between four and five o'clock of that morning. There were two other men on deck; one was on the look-out and the other was at the wheel.

3. Int. How was the wind, the weather, and the sea when you took charge of the deck on that morning? What sails were set on the schooner, and on what tack was she?

Answer. The wind was a fresh breeze from about southwest by west; the weather was clear, starlight; the sea was smooth; there was not much sea. All sails were set on the schooner except the main topsail and the jib topsail.

4. Int. What was the course of the schooner when you took charge of the deck; how was it changed before you saw the steamer's light, and why?

Answer. I was north by west ½ west. It was changed half a point to north by west, and it was changed because I wanted to go further up, so as to lay a course up the bay. We were at the time about
89 twenty or twenty-five miles from the capes of the Chesapeake Bay.

5. Int. When did you first see the steamer's light; what kind

of a light was it; how did it bear from the schooner; and state what you supposed to be its distance; and when you first saw it what did you suppose it to be, and why?

Answer. I first saw the steamer's light about twenty minutes past four o'clock. It was a white light. It bore about north from the schooner, and I supposed it was from a mile and a half to two miles off. The steamer was on our starboard bow about a point. When I first saw the light I supposed it to be a ship at anchor, because there was only the white light to be seen.

6. Int. State all that occurred from the time you first saw the light until you came in collision with the steamer; state particularly what *offers* you gave, what change was made in the schooner's course, and state what her course was at the time of the collision.

Answer. From the time I first saw the steamer's light; I took the glasses and looked at it; then I told the man at the wheel that it was a ship anchored, and to let her luff about a point, and that brought the light to bear about two points on our starboard bow. I stood looking with the glasses, and let the schooner run on a little while, and I thought we would not clear as far as we ought to, and I told the man at
90 the wheel to luff a little more, so as to give myself plenty of room. He did luff, and I ran on a little ways and I kept looking with the glasses, and we got so close that I discovered that it was a steamer by her smoke-stack. Then we were right close together, and so close that I thought it was impossible to keep off, and I thought to keep off, and I told him to port the wheel, and by that time the captain was on deck, and he said put the wheel hard astarboard, that we could not keep off clear, and let her come in the wind. The wheel was put hard astarboard and she come up until we struck the steamer. When we struck her I was standing to leeward looking at the steamer, and did not look at the compass, and cannot state the course of the schooner at the moment of collision.

7. Int. What lights did you observe in the steamer from first to last; what side light ought you to have seen in her, if she was heading from south by west to south-southwest, from the time you saw the light up to the collision, and she was bearing, after you had luffed, two points on your starboard bow?

Answer. From first to last I saw in the steamer one white light. If the steamer was heading from south by west to south-southwest, and was bearing, after we luffed, two points on our starboard bow, I ought to have seen a red light.

8. Int. Did you discover the steamer to be in motion at the time
91 you first saw her smoke-stack? and state if she sounded a whistle at any time, and if any one on board of her hailed you.

Answer. I did not discover her to be in motion at the time I first saw her smoke-stack, nor did I hear her whistle at any time, nor did I hear any one on board of her hail.

9. Int. Did you notice the schooner's lights before and after the collision? If so, state their condition; and if so, state who took them down, and state what places they were in before and at the time of the collision.

Answer. I asked the man on the lookout if the lights were burning before the collision, and he said they were. I did not notice them myself. After the collision I ordered the lights to be taken down, but I did not see them myself.

10. Int. From the time you first saw the steamer's light was it possible for those on board the steamer to see the schooner's red light? If you say it was impossible, state why.

Answer. I think it was impossible, because the red light was on our port bow and the steamer was on our starboard bow.

Cross-examination:

1. Cross-int. You say that when you first saw the steamer's light, it bore about a point on the schooner's starboard bow, and that you
92 continued to watch said light; will you state how said light bore just before and at the time of the collision?

Answer. I could not, because I was looking at the light and not at the compass.

2. Cross-int. If said light had been upon a vessel riding at anchor, the schooner's course being changed by you, as described, for the purpose of passing clear of said vessel supposed to be at anchor, would not said light have appeared to pass every minute more and more on your starboard bow?

Answer. Well, not at that distance it would not so very much, I should not suppose, she being about two miles ahead.

3. Cross-int. Ought not said light, if stationary, to have borne still further on your starboard bow as the distance lessened?

Answer. Yes; I should suppose it would.

4. Cross-int. How near were you to said steamer when you first made her out to be a steamer by her smoke-stack?

Answer. Well, she was getting very close; I should think less than a hundred yards; somewhere between fifty and a hundred yards, I should think.

5. Cross-int. How much on your starboard bow did the steamer's light bear, just before you made her out by her smoke-stack?

93 Answer. I should think about three points on the starboard bow, but I cannot state exactly; I did not look at the compass.

6. Cross-int. How long was it after you first saw the steamer's light before you made her out by her smoke-stack?

Answer. I suppose it was about seven or eight minutes.

7. Cross-int. If you were watching the steamer's light all the time, did it not occur to you that you were approaching very rapidly a stationary light?

Answer. Yes; I thought we were.

8. Cross-int. How wide is the Chesapeake Bay, if you know, where the collision occurred, and was it near the middle of the bay, or towards which shore of the bay was it that said collision occurred?

Answer. I do not know, but I suppose about fifteen miles. It occurred rather on the western shore, and we—perhaps a couple or three miles from the western shore. We had passed York Spit.

9. Cross-int. How long have you been mate of said schooner, and is it customary for the mate to alter a vessel's course without calling or notifying the captain?

Answer. I have been mate of the schooner since the 22nd day of March, 1872, the last time. I have been mate of her before. It is customary for the mate to alter a vessel's course without calling or notifying the captain, if he pretends to know his business.

94 10. Cross-int. When did you first discover the steamer to be in motion?

Answer. After we came together. I could see her screw making the water fly. That was the first discovery of it that I made.

11. Cross-int. How many knots was the schooner making just before and at the time of the collision?

Answer. I suppose she was making about seven or eight knots?

Re-examination:

11. Int. What was her rate of speed when you first discovered the light, and was not her rate a good deal lessened when she came into the wind, about the time of the collision?

Answer. It was about seven or eight knots when I first saw the light. I suppose in coming into the wind she did not go quite so fast, with her helm hard down and her sails beginning to shake.

Recross-examination:

12. Cross-int. How far off were you from the steamer when the schooner's helm was put hard down and her sails began to shake?

Answer. I think between fifty and a hundred yards when we
95 put her helm hard down; her sails did not begin to shake as soon as we put her helm hard down.

13. Cross-int. When you ordered the schooner's helm to be ported, did you think you could clear the steamer by so doing, or what was your object in giving that order?

Answer. I did not think she could be cleared either way. I thought it best to try one or the other. Before my order could be obeyed, the captain said put it hard astarboard.

A. J. LETTS.

Subscribed and sworn to before me this 22nd day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

Re-examined:

12. Int. You have stated that the schooner was on the port tack when you took charge of the deck, at 4 o'clock on the morning of the 3rd of October, 1872. Will you state whether any change was made in the sails after you took charge of the deck and up to the time of the collision, and how the sheets were at the time of the collision or just before?

Answer. There was no change made in the sheets, and they were about two-thirds off from the time I took charge of the deck up to the time of the collision, and the sails were off on the starboard side all the time.

A. J. LETTS.

96 Subscribed and sworn to before me this 22nd day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

ELIJAH VAN CLEAF, being duly sworn, according to law, to testify the whole truth, and being examined on behalf of the respondents, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, and occupation?

Answer. My name is Elijah Van Cleaf. I am thirty-six years of age, and I am a seaman, and have been going to sea between eighteen and nineteen years.

2. Int. State whether you were on board the schooner Stephen Morgan on the 3rd October, 1872, and in what capacity.

Answer. I was, and was master of the vessel.

3. Int. Did you, or not, leave the deck of the vessel at four o'clock on the morning of that day, when your watch was ended? If so, state what was the course of the vessel when you went below.

Answer. I went below at four o'clock, my watch then expiring, and at that time the course of the schooner was north by west ½ west.

4. Int. Please state all that occurred and all that you did after you came on deck, just before the collision.

97 Answer. When I first came on deck I looked under the boom and saw this light. When I was in my berth I heard the mate say "Let her luff," and in two or three minutes I heard him say "Let her luff" again. I then ran out on deck and asked the mate what was the matter, and he said there was a light on the lee bow. I looked under the boom and saw the light, and told him to put the wheel hard down, as it was a bright light; and the wheel was put hard down. The vessel was coming too when the collision took place. When I gave this order I do not think the steamer was over fifty yards off. I saw no other than a bright light; I did not see either a green or red light from the time I first saw this bright light, as I have described, until the steamer disappeared.

5. Int. Did you think then and do you think now that the order you gave to put the wheel hard down was the best order to give under the circumstances of the case? If you do, state why.

Answer. I do think so, because I did not think we could keep off to clear the vessel. By putting the wheel to starboard, we could go to windward of her.

6. Int. What did you suppose the light to be upon coming on deck, and how was it bearing at that time?

Answer. I supposed it was the light of a vessel at anchor. I did not look at the compass, but I should think it was bearing from three-

98 quarters to half a point on the starboard bow.

7. Int. What would have been the consequence, do you suppose, if you had put the helm up and kept off instead of starboarding the helm?

Answer. I think it quite likely both vessels might have sunk.

Cross-examination:

1. Cross-int. Where did you strike the steamer?

Answer. On the port side, a little forward of amidships.

2. Cross-int. From the position of the two vessels at and from the moment when you came on deck, and from your opportunities of observation, can you state positively that the steamer had no green light on her starboard side?

Answer. I cannot. I did not see any.

3. Cross-int. Could you have seen the steamer's starboard light if there was one in your position?

Answer. Well, I could not tell how it was heading.

4. Cross-int. Did not your vessel drop astern of the steamer immediately after the collision?

Answer. Yes.

5. Cross-int. Could you in that position have seen either of the steamer's side-lights if they were burning?

99 Answer. No.

6. Cross-int. How long have you been master of a vessel, and is it your practice to allow the mates of vessels under your command to change the vessel's course without calling or notifying you?

Answer. I have been master of vessels about fourteen years. It is my practice to allow mates to alter the course of vessels under my command without notifying me.

7. Cross-int. Will you state where the side-lights, red and green, on

board of your vessel are placed, and where they were placed at four o'clock on the morning of October 3, 1871, if you observed them?

Answer. The green light is placed in the starboard fore-rigging, and the red light similarly placed on the port side; and the lights were so placed on the schooner on that morning.

8. Cross-int. What do you do when said lights require trimming? If they are taken down for the purpose, state whether you have other lights to replace them, and whether such other lights are put in their place.

Answer. When we want to trim them we take them down and put oil in them, and put them up again. We have no other lights.

Re-examined:

100 8. Int. If the lamps are filled with oil how long will they burn without refilling?

Answer. They will burn about twelve hours, and we trim them whenever they get dim. We have no regular time to trim them.

ELIJAH VAN CLEAF.

Subscribed and sworn to before me this 22nd day of October, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

Transcript from log-book of steamship Carolina.

Log of the Carolina from Baltimore towards Queenstown.

REMARKS.

THURSDAY, A. M., *October 3rd*, 1872.

Courses, 4 a. m. S. by W. Moderate breeze and fine clear weather. 4.10 a. m. relieved the second mate. The pilot on the bridge; 4.20 the lookout, "Ramsey, A. B., reported a red light ahead; the pilot seeing the light and knowing it to be a vessel coming in opposite direction, ordered the man at the wheel, "McAvoy, A. B.," to port to S. S.W., which was done; this brought the light about two points on the port bow; ascertained it to be a three-masted schooner; found she was steering very strangely. Put our helm hard aport, and the pilot sang out to the schooner to put his helm up; instead of doing so, they put
101 their helm down to starboard and run into us, striking us amidships, our head being S. W. and "York Spit" light bearing W. by S. Stopped the engines directly and sounded the pumps; found their was 1 foot of water in the main. On looking at the damage we had received, found two plates in the top side bulged in, the bulwark broke, upper bridge and stanchions broken, port life-boat stove in badly, the davits bent right in-board, and the chocks tore away from the deck, the whole of the chain-bridge started, 2 of the frames being broke, bulkhead fronts of the bridge-berths and galley broken in and started from the deck.

N. B.—"Got no reply from the schooner."

N. B.—On ascertaining the amount of damage, found it was impossible to proceed, the ship making 9 inches of water in an half an hour. Norfolk, Virginia, being the nearest port, proceeded under full steam for Norfolk.

R. FOWLER.

Log of the Carolina from Baltimore towards Queenstown.

REMARKS—Continued.

THURSDAY, *October* 3, '72.

1 of the gig's davits broken in-board; the other gone altogether. The fore yard broken on the port side about four feet from the slings, the sail tore, the foremast head injured, and the fore gaff riggin' and
102 gear in connection with the above injured and carried away. Fresh breeze from the westward; water washing over the decks; ship making 2 inches per hour; all pumps going; 7 a. m., the Norfolk pilot on board. When the ship got into the river in smooth water, found she was not making any water; 10.30, anchored in 5 fathoms, below the town.

THURSDAY, *October* 3, 1872.—Light breeze and fine weather; 4 p. m., the harbord-master came on board, hove up the anchor, and steamed into the wharf, and mooved the ship alongside, and set the watch, David Hodges being the night-watchman.

N. B.—As soon as the anchor was down the captain went on shore to the consul, who ordered a survey to be held on the ship.

In the district court of the United States for the district of Maryland.

JOSEPH GOOD
vs.
THE SCHOONER STEPHEN MORGAN.

I, Robert Lyon Rogers, U. S. commissioner for Maryland, do hereby certify that on this 22nd day of October, A. D. 1872, Thomas W. Hall, jr., esq., proctor for the libellant, and F. W. Brune, esq., proctor for the respondents in said cause, examined the foregoing paper, and admitted the same to be an accurate transcript from the log of the steamship Carolina, on a voyage from Baltimore towards Queenstown, Ire-
103 land, and agreed that the same should be offered in evidence in said cause, at the trial thereof, on behalf of the libellants therein, as though the same were the original log of said vessel for said voyage, subject to all legal exceptions as might be taken by the respondents to the offer of said original log if the same were offered on behalf of the libellants at the trial of said cause.

Given under my hand and official seal at the city of Baltimore, in the district of Maryland, this 22nd day of October, A. D. 1872.

[SEAL.]

ROBT. LYON ROGERS,
U. S. Commissioner for Maryland.

Memorandum.

GOOD
vs.
E. MORGAN.

	430	tons,
	at 8	cents per ton.
	$34.40	per day.
	6	days.
	206.40	
Bills	247.40	
	1.69	
	2.63	
	251.72	
	458.12	

We admit the papers shewing the above amount of damage to the schooner S. Morgan as evidence in the cause to the same effect as if they had been duly proved before a commissioner.

I. NEVETT STEELE,
T. W. HALL, JR.,
104 *For Libellant.*

JAN'Y 2D, 1873.

Decree.

In the district court of the United States for the district of Maryland.
In admiralty.

JOSEPH GOOD
vs.
SCHOONER STEPHEN MORGAN, (FREDERICK DAVY & others, claimants.

This cause standing ready for hearing, & the proceedings & evidence therein & the arguments of the proctors for the respective parties having be*ing* read, heard, & duly considered, & it appearing to the court thereupon that the libellant, Joseph Good, as owner of the steamship Carolina, mentioned in the pleadings, by reason of the collision & injury therein stated, has sustained damages amounting in the aggregate to the sum of eleven thousand & fifty-seven dollars & eight cents,($11,057.08,) and that the respondents, owners of the schooner Stephen Morgan, have also sustained damages, by reason of said collision, to the amount of four hundred & fifty-eight dollars & twelve cents, ($458.12,) and it further appearing to the court that the said collision was caused by mismanagement & fault both on the part of those on board and in charge of the said schooner, & also on the part of those on board & in charge of
105 the said steamship Carolina, & that all the losses & damages arising therefrom ought to be equally divided, so that the libellant, as owner of said steamship, shall bear one-half thereof, & the respondents, as owners of said schooner, shall bear the other half thereof:

It is thereupon, this twenty-fifth day of January, A. D. 1873, adjudged, ordered, and decreed that the said libellant is entitled to recover against the said schooner Stephen Morgan, the respondents, her owners, and the stipulators for the said schooner in this cause, the sum of five thousand two hundred and ninety-nine dollars, ($5,299.)

And it is further adjudged, ordered, & decreed that the said Frederick Davey, William E. Hooper, & William J. Hooper, the stipulators for said schooner, cause the engagements of their stipulation to be performed, & that they pay to the libellant, Joseph Good, on or before the fifth day of February, A. D. 1873, the said sum of five thousand two hundred & ninety-nine dollars, ($5,299.)

And it is further adjudged, ordered, & decreed that the said parties, respectively, pay each their own costs.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the said libellant, by his proctors, in open court here, have prayed an appeal to the next
106 term of the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next; and to him it is granted.

And also the said owners and claimants and the said stipulators have

prayed an appeal to the said circuit court for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore aforesaid on the said first Monday in April next; and to them it is granted.

Therefore it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court; and the same is transmitted accordingly.

Respondents' appeal-bond.

Know all men by these presents that we, Frederick Davey, William E. Hooper, William J. Hooper, and Richard M. Heslin, are held and firmly bound unto Joseph Good, in the full and just sum of three hundred dollars, to be paid to the said Joseph Good, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this thirtieth day of January, in the year of
107 our Lord one thousand eight hundred and seventy three.

Whereas lately, at a district court of the United States for the Maryland district, begun and held in the city of Baltimore on the first Tuesday of December, in the year of our Lord eighteen hundred and seventy-two, in a suit depending in said court between Joseph Good, libellant, and the schooner Stephen Morgan, defendant, a decree was rendered on the 25th day of January, 1873, against the said schooner, her owners, and Frederick Davey, William E. Hooper, and William J. Hooper, the stipulators; and the said owners of the said schooner Stephen Morgan and the said stipulators having obtained and entered an appeal from said decree to the next term of the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday of April next:

Now, the condition of the above obligation is such, that if the said owners of the said schooner Stephen Morgan and the said stipulators shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FREDERICK DAVEY. [SEAL.]
WILLIAM E. HOOPER. [SEAL.]
WILLIAM J. HOOPER. [SEAL.]
R. M. HESLEN. [SEAL.]

Sealed and delivered in presence of—

108 Bond approved 30 Jan., 1873.

WILLIAM F. GILES.

Libellants' appeal-bond.

Know all men by these presents that we, James Hooper and William B. Hooper, are held and firmly bound unto Frederick Davey, Job Falkenburgh, Henry Davey, John R. Halladay, William Keeney, Samuel Birdsall, Amos Falkenburgh, Thomas J. Falkenburgh, and Stephen Morgan, all residents of the State of New Jersey, owners and claimants of the schooner Stephen Morgan, in the full and just sum of three hundred dollars, to be paid to the said owners and claimants of the said schooner Stephen Morgan, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made and done we bind

ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this thirtieth day of January, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas lately, at a district court of the United States for the Maryland district, begun and held in the city of Baltimore, on the first Tuesday of December, in the year of our Lord eighteen hundred and seventy-two, in a suit depending in the said court between Joseph Good,
109 libellant, and the said owners and claimants of said schooner Stephen Morgan, defendant, a decree was rendered on the 25th day of January, 1873, against the said schooner, her owners and stipulators; and the said Joseph Good having entered and obtained an appeal from said decree to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next:

Now the condition of the above obligation is such, that if the said Joseph Good shall prosecute his said appeal to effect, and answer all damages and costs if he fail to made his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES HOOPER. [SEAL.]
WILLIAM B. HOOPER. [SEAL.]

Sealed and delivered in presence of—
SAML. E. HOOPER.

Bond approved 1st February, 1873.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy of the record and proceedings aforesaid, taken and made from the proceedings in the cause aforesaid,

I have hereunto subscribed my name and affixed the seal of the said district court, this 31st day of March, A. D. 1873.

110 [SEAL DIST. CT. U. S.] JAMES W. CHEW,
Clerk District Court.

Deposition on the part of the claimants of the schooner Stephen Morgan taken, &c.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Robert Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that, on the 24th day of December, in the year of our Lord one thousand eight hundred and seventy-two, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me James Emory, witness for the respondents in a certain civil cause depending in the district court of the United States for the district of Maryland, wherein Joseph Good is libellant, and the claimants of the schooner Stephen Morgan are respondents. And the said James Emory, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the respondents,
111 makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, age, residence, and occupation?

Answer. My name is James Emory. My age is fifty-six. I reside in London, in the kingdom of Great Britian. I am a master mariner.

2. Int. State whether or not you were an officer on board the British steamship Carolina, of Hull, of which Robert T. Macgarr was master; and, if so, for how long.

Answer. I was second officer of said vessel from the 30th of August, 1872, until the 14th day of November, A. D. 1872, on which day the vessel was abandoned at sea.

3. Int. Were you or not on board said steamer when she sailed from Baltimore on the 2nd of October, A. D. 1872, in the capacity of second officer?

Answer. I was.

4. Int. State what time you left Baltimore on that day, and state what occurred from the time of leaving up to midnight of that day.

Answer. We left Baltimore at daylight in the morning. We were aground on the shoals going down the river for some two or three hours. I do not know the name of the place where we grounded, but it was in the neighborhood of some dredging-machines. After we grounded we were assisted by two tugs, seeking to get us afloat. They
112 pulled at us from somewhere about ten o'clock in the morning until about two p. m., breaking some of the best hawsers we had on board, and got us into deep water about two p. m. They broke a tow-line and seven-inch hause, and a warp, and played the deuce with the ropes we had on board. Nothing else than this of importance occurred up to midnight.

5. Int. State whether or not you had charge of the watch at any time during the night of the second and the morning of the 3rd of October. And state at what hour you went on deck; when you left the deck; and state who were there with you.

Answer. I went on deck at 12 o'clock on the second of October and remained on deck until ten minutes past four of the morning of the third of October. There were two men and a boy on the watch. I do not remember the names of the men. The men on watch had been shipmates but about twenty-four hours. They came aboard in Baltimore, and I did not know their names. They deserted the ship when she returned to Baltimore after the collision. I do not know the name of the boy. I think it was Henry, but the other name I do not know. The pilot was on deck and had charge of the ship. The ship was at the time in the Chesapeake Bay.

6. Int. Do you know or not a boy by the name of Hedges, belonging to the ship? And, if you do, state whether or not the boy Hedges was on deck during your said watch; and state particularly whether or
113 not you gave him any directions about the lights of the ship during your said watch.

Answer. Yes, I do know the boy Hedges was in the ship, but he was not in my watch, nor was he on deck during my watch, nor did I give him any orders. I never saw Hedges until after the collision.

7. Int. Where were you during your said watch?

Answer. On the bridge, near the man at the wheel.

8. Int. Where was the bridge?

Answer. In the centre of the ship about eight feet above the deck.

9. Int. Were the ship's lights or any of them, by your direction trimmed, or taken down to be filled with oil, or otherwise attended to during your said watch?

Answer. They were not.

10. Int. As officer of the deck was it not your duty to give such orders, if any were given?

Answer. Yes, it was.

11. Int. Where was the lamp-room?

Answer. It was the third berth on the main deck under the bridge, on the starboard side.

12. Int. Would or not it have been possible for any one, during your said watch, to take down successively the three lights of the ship, and take them in turn to the lamp-room, and restore them to their places, without passing along the deck in front of you, or near to you and attracting your attention?

114 Answer. No, it is impossible that it could be done without my seeing it.

13. Int. State, if you can, how long it would take to take down each of the lights successively, take them in turn to the lamp-room, trim them, pick them, fill them with oil, and restore them to their proper places?

Answer. It would take them about five minutes for each lamp; I doubt if they could do the mast-head light in five minutes.

14. Int. Did you or not at any time during your said watch, notice the lamps of the Carolina? If you did, state at what time, and state how they were burning.

Answer. I had duty about half past three on the fore-part of the ship, and between that and twenty minutes to four. I saw the lights; they were burning in about their usual state. I did not observe them again until I left the deck.

15. Int. At what time during the night were the lamps usually trimmed and attended to on the Carolina?

Answer. The regular practice was at twelve o'clock at night, or before and after, if needed.

16. Int. Do you know whether or not they had been attended to at midnight of the night in question?

Answer. I do not; I was never so informed.

17. Int. What officer had charge of the watch before yours?

Answer. The chief officer, Mr. Fowler.

115 18. Int. Did he say anything to you about the lights, when you came on at midnight?

Answer. No; he did not.

19. Int. During your said watch did or not the pilot call your attention to the lights or request you to have them attended to.

Answer. He did not. He never mentioned the lights to me.

20. Int. Did you or not, during your said watch, see the boatswain of the ship on deck, or did you or not give him any direction about the ship's lights?

Answer. I did not see the boatswain on deck, nor did I give him any direction about the ship's lights. The boatswain came out of his berth after the collision.

21. Int. Who relieved you from your said watch, and when?

Answer. The chief officer, Mr. Fowler, about ten minutes after four o'clock, a. m.

22. Int. Did you or not say anything to him then about the ship's lights?

Answer. No; the ship's lights were never mentioned.

23. Int. What did you do after leaving the deck?

Answer. I went into my cabin on the main deck about twelve or fourteen feet forward of the bridge, being the foremost berth on the port

side. When I went into my cabin I washed myself, smoked a pipe of tobacco, and then laid down in my shirt and drawers.

116 24. Int. Did you go to sleep?

Answer. I did not.

25. Int. State what happened further and when.

Answer. After I had been laid down some two or three minutes—I cannot state the exact time—I heard Ramsey, the man on the lookout, report a light twice in succession without any answer; the third time he called out he was answered by the pilot; a few minutes after I heard the pilot hail a schooner, and, thinking there was danger, I came out of my berth. No whistle was blown and no engine was stopped. When I came out of my berth the schooner struck instantly the centre of the ship. The schooner then fell astern.

26. Int. Where did the schooner strike the ship?

Answer. Near about amidships on the port side with her starboard bow.

27. Int. Did you or not see the schooner? If you did, state all you saw.

Answer. I saw the schooner as she was falling astern, with her sails shaking and her green light visible, and that made me know it was the starboard side.

28. Int. Do you know whether or not there was a set of duplicate regulation-lights on board the Carolina?

Answer. No; there were not duplicate lights on board. There

117 was one small relieving light, showing three faces, but I never saw it in use until after the collision.

29. Int. Was the relieving-light of which you speak as large as the regulation-lights? If not, state how large it was.

Answer. It was not as large as the regulation-light. It was about three or four inches in diameter, as near as I can tell, and constructed with springs, to show the different shades.

30. Int. Have you served on board any other British steamers? If so, give their names, and state if you ever saw such light used on any of them.

Answer. Yes; I have served on several. The last one was the G. M. Strand. The Sir John Easthope I served in, and the R. D. Mangies, the Durham, the Northumberland, the M. E. Clark, the Nicholas Wood, the New Sky. I have served in several more, but the names do not occur to me at present. No such light was ever used on any of these steamers. We generally used duplicate lights.

31. Int. Did you or not see the colored lights of the steamer taken in on the morning of the 3rd of October? If you did, state at what hour they were taken in, and how they were burning?

Answer. I saw them taken in at daylight, and they were burning dimly.

32. Int. Judging from your experience of the lights of that

118 steamer, how long, in your opinion, should they have continued to burn brightly if they had been properly trimmed and filled with oil shortly before midnight on the 2nd of October?

Answer. Four or five hours.

33. Int. Did you continue on the ship until she returned to Baltimore for repairs, and while she was detained in this port?

Answer. Yes; I did.

34. Int. Where did you sleep while she was detained in port, and where did you take your meals?

Answer. I slept in my berth, on the main deck, and took my meals on shore.

35. Int. How many sleeping-cabins were injured by the collision, if any?

Answer. Three, I think; the cook's, boatswain's, and carpenter's.

36. Int. Was the captain's cabin or the main saloon at all injured by the collision?

Answer. No, sir; they were not.

37. Int. State whether or not there were any passengers on board, and how many sleeping-berths, if you know, were in the saloon.

Answer. There were no passengers except the captain's wife. There were some twenty or thirty sleeping-berths in the saloon.

38. Int. Were you or not on the ship every day while she lay in port?

119 Answer. Yes; I was.

39. Int. Was the donkey-engine at work or under steam all the time you were on board ship? If not, state how long it was at work or under steam.

Answer. I never saw the donkey-engine under steam or at work except one day, and that was to send up the foreyard, set the rigging up, pump the ship, and wash the decks.

40. Int. State, if you know, what injury, if any, was done to the ship's ropes or hawses by the collision, and whether or not any hawses were lost in consequence of the collision.

Answer. There were two or three small ropes broken, but no hawse was either broken or lost by the collision.

41. Int. How many feet forward of the lamp-room was the foremast of the Carolina?

Answer. I should think between seventy and eighty feet, as near as I can guess.

42. Int. Were you or not sent up from the ship while she lay at Baltimore by the master or other person in charge to the commissioner's office at the time your shipmates came up to give their evidence, to be used in the district court?

Answer. Mr. Hooper, the shipping-master, came and fetched me from the ship, and brought me to the office-door of the U. S. commissioner.

120 43. Int. Did you give your evidence before the U. S. commissioner?

Answer. No; I did not. I awaited a few minutes outside of the door, but the captain and Mr. Hooper came and told me to go on board.

44. Int. State how you reached this country after the Carolina was abandoned?

Answer. I was taken off by a Norwegian bark and brought to New York.

45. Int. Why did you come to Baltimore?

Answer. I came to give evidence in this case.

46. Int. What inducements, if any, were offered you to come, and by whom?

Answer. I was promised my expenses to be paid here, and a passage to England secured for me. This offer was made me by Captain Davey, one of the claimants and owners of the schooner Stephen Morgan.

Examination-in-chief closed.

Here adjourned to Friday, 27 December, 1872, at 2 o'clock p. m.; and meeting this Friday, 27 December, 1872, pursuant to adjournment, proceeded as follows:

The witness, being cross-examined by the proctor for the libellant, makes oath, deposeth and saith as follows:

1. Cross-int. Has your passage to England already been secured, and how, and when do you expect to go?

121 Answer. It has not been secured, but I expect to leave for England next Wednesday, on one of the mail steamers.

2. Cross-int. What day did you arrive in New York, after being taken off the Carolina, and were not Captain McGarr and the rest of the officers and crew of the Carolina with you in New York at the same time?

Answer. I think we arrived in New York the 4th or 5th of December; I do not remember precisely the day. Captain McGarr and the rest of the officers and crew were with me in New York at the same time.

3. Cross-int. Do you know what became of Captain McGarr and your other shipmates of the Carolina, or how long they remained in New York?

Answer. I do not know. I think they were to leave New York for England on Saturday after the Friday I left New York, but whether they left or not I do not know.

4. Int. How long had you been in New York, and where and with whom did you go, on the Friday you mention?

Answer. I had been in New York nine days, and was boarding at the Sailors' Home with the rest of the officers and crew. I left New York on Friday night with Captain Frederick Davy, one of the claimants in this case, and went with him to his house and staid there until I came on here to Baltimore.

122 5. Int. You left New York then with Captain Davy, about the middle of December, from the 12th to the 15th, did you not?

Answer. I left on the 13th day of December.

6. Int. Was the ship's galley or cook-house of the Carolina in a condition to be used for cooking on board of said steamer when she was undergoing repairs at this port, after the collision?

Answer. Not after the third day until about three days before we left the wharf. They could not cook in the galley for the reason that the decks were taken up, and they were not laid down until two or three days before we went away. They might have done it sooner, but they did not.

7. Int. You never made but the one voyage in the Carolina I understand, when she came to this country, previous to the return-trip, in which she met with the collision; is that so?

Answer. That is so.

8. Int. When you speak, in your examination-in-chief, of the lights of the Carolina burning dimly, when they were taken in on the morning after the collision, will you state what lights you mean, and whether you mean all three of her said lights, and at what hour were they taken in?

Answer. I mean the side-lights, and they were taken in about daylight. That was our general custom.

123 9. Cross-int. Do you remember at what hour they were taken in after the collision?

Answer. I do not.

10. Cross-int. You have testified orally at the trial of this case in the district court of the U. States, have you not?

Answer. Yes, I did.

11. Cross-int. Did you not there testify that the said lights were taken in at ½ past five?

Answer. I think I said at daylight or about half past five, if I recollect aright.

12. Cross-int. Was it not your duty while you were officer in command of the deck, from midnight until ten minutes after four on the morning of the collision, to know whether the ship's lights were in their proper places, and burning properly, during your said watch?

Answer. Yes, it was.

13. Cross-int. Was it not your duty when you came on deck at midnight, if the ship's lights had then needed trimming, to order them to be trimmed?

Answer. Yes, it was.

14. Cross-int. You did not order them to be trimmed, did you?

Answer. No, I did not.

15. Cross-int. Why did you not order them to be trimmed; was it not because, in your judgment, they did not require it?

124 Answer. I did not, because, in my judgment, they did not require it.

16. Cross-int. If at any time during your watch on deck the lights were burning dimly, was it not your duty to have them trimmed, or refilled with oil as the case required?

Answer. If they were invisible it was.

17. Cross-int. What do you mean by the lights being invisible; that they were out?

Answer. Yes.

18. Cross-int. Then unless the lights actually went out, do you mean that you would not give them any attention?

Answer. Decidedly I should attend to them if they required it. It is my duty to do so.

19. Cross-int. Would you not consider the lights as requiring attention if they were burning with less than their usual brilliancy, or in a manner which did answer the requirements of law?

Answer. At all times I would attend to the lights. In all cases they must be attended to. If they were not burning as bright as usual, I would think they needed attention.

20. Cross-int. When you were examined before as a witness in this case in the district court, did you not testify that when you came on deck at 12 o'clock, although you did not see the lamps trimmed,

125 you were told they had been trimmed, and that you had no doubt such was the fact?

Answer. No; I did not say anything of the sort.

21. Int. You did not state then that you had no doubt that the lights had been trimmed as usual at 12 o'clock?

Answer. I stated they might have been trimmed, but I was never informed that they had been trimmed.

22. Cross-int. But you did not say that you had no doubt they had been trimmed, or words to that effect?

Answer. I said our usual time for trimming the lights was twelve o'clock, and that although I had not been told, I had no doubt that they had been trimmed.

23. Cross-int. How many feet aft from your berth or cabin did the schooner strike the ship?

Answer. About eighteen feet, I think.

24. Cross-int. When you came out of your cabin at the time of the collision, did you observe the schooner's bowsprit, or any of the rigging attached thereto, and in what position did you so observe it?

Answer. No, I did not; it was impossible; we were going past her too fast.

25. Cross-int. When you were examined before as a witness in this case, what portion of the schooner's rigging did you then state
126 came near striking you on the head as you came out of your cabin?

Answer. No part at all; I never mentioned striking me in the head.

26. Cross-int. What was it you said you had to dodge to keep it from hitting you when you came out, at the moment of the collision?

Answer. I do not remember saying anything of the sort about dodging anything.

27. Cross-int. Did you say nothing about the schooner's martingale; and to what portion of the rigging is that term applied?

Answer. No; I said nothing about her martingale. The martingale is a portion of the rigging about the bowsprit.

27. Cross-int. When you were in your cabin, after you left the deck at ten minutes past four, you say you heard Ramsey twice report a light on the steamer's bow before he received an answer; where was Ramsey stationed, and how did you know it was Ramsey?

Answer. He was stationed on the top-gallant forecastle; I saw him there before I went into my berth, and also heard his voice, which I knew above all men on board.

28. Cross-int. Who was at the wheel when you left the deck at ten minutes past four?

127 Answer. McAvoy.

29. Cross-int. Did not both of these men belong to the first officer's watch, which came on at four o'clock?

Answer. Yes, they did, both of them.

30. Cross-int. Whom did Ramsey relieve on the lookout, and whom did McAvoy relieve at the wheel?

Answer. They relieved the two strange men of whom I have spoken, and whose names I could not mention.

31. Cross-int. Will you state now whether Ramsey and McAvoy were not, both of them, shipped in Baltimore, and whether either of them had been on board of the Carolina more than twenty-four hours?

Answer. Yes, they were shipped in Baltimare; but I think they had been on board a day or two before the other two men.

32. Cross-int. How do you know, or do you know, who was on deck after you went to your cabin at ten minutes after four, and before you came out again at the time of the collision?

Answer. The chief officer relieved me. McAvoy took the wheel, Ramsey the lookout, and these are all the parties I saw before the collision. After the collision I saw the engineer the first man, and then the boatswain came out from under the poop, the mate an' pilot, and then I went and put my clothes on.

128 33. Cross-int. When you took your clothes off and lay down in your berth, before the collision, it was for the purpose of going to sleep, was it not?

Answer. That was my intention if I could have got it.

34. Cross-int. And you do not remember the name of any person who was in your watch from midnight till 4 a. m.?

Answer. There was one I called Jim and Jack; these were the strange men; and the boy I called Harry; their other names I do not remember.

35. Cross-int. How was the schooner heading with respect to the steamer when you first saw her after the collision?

Answer. Nearly in a line with the steamer; rather off, if anything, on the steamer's quarter.

36. Cross-int. She was heading, then, the same way as the steamer, and on her quarter.

Answer. Yes; nearly so. She was rather canted off from the steamer. After she struck she bounded off and retained about the same position; there could not have been much alteration in the short time. Her bow was a little canted off.

37. Cross-int. And it was then you saw her green light, was it not?

Answer. Yes.

Re-examined by respondents:

129 Int. How long did Hedges and McAvoy continue to be your shipmates?

Answer. From the time we left Baltimore the first time until we reached New York, in the Norwegian bark that took us from the Carolina.

Int. State, if you know, by what vessel your former shipmates of the Carolina returned to England.

Answer. It was one of the packets of the Inman line, and on the 14th of December, since I come to think. I think it was the City of Manchester.

JAMES EMORY.

Subscribed and sworn to before me this 27th day of December, A. D. 1872.

ROBT. LYON ROGERS,
U. S. Commissioner.

I, Robert Lyon Rogers, a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of James Emory is because of the consent of the proctors of the respective parties to said cause that the same should be taken in manner and form as the same has been taken; and I further certify that Thomas W. Hall, jr., esq., proctor for the libellant, and Arthur George Brown, esq., proctor for the respondents, were both present before me at the taking of the said deposition.

130 And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] ROBT. LYON ROGERS,
U. S. Commissioner for Maryland.

Depositions on the part of Joseph Good, taken, &c.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Robert Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth circuit in and for the Maryland dis-

trict, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in
131 the courts of the United States," do hereby certify that, on the fifth day of April, in the year of our Lord one thousand eight hundred and seventy-three, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me Daniel T. Evans, a witness for the appellant, Joseph Good, in a certain civil cause depending in the circuit court of the United States for the fourth circuit in and for the district of Maryland, wherein a certain Joseph Good is appellant, and the claimants of the schooner Stephen Morgan are appellees.

And the said DANIEL T. EVANS, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellant, Joseph Good, makes oath, deposeth, and saith as follows, to wit:

1. Int. What is your name, your age, where do you reside, and what is your occupation?

Answer. My name is Daniel T. Evans. I am forty-nine years of age. I reside in Lombard street, East Baltimore, Maryland; and I am a member of the Association of Maryland Pilots.

2. Int. How long have you been a licensed pilot?

Answer. I have been a licensed pilot twenty-nine years.

132 3. Int. Were you on board the steamship Carolina, McGarr, master, of Hull, England, bound on a voyage from Baltimore to Queenstown, Ireland, on the morning of the third of October, eighteen hundred and seventy-two? If so, in what capacity?

Answer. I was on board of her as pilot.

4. Int. Where were you and what were you doing between the hours of four and five o'clock on said morning when said steamer came into collision with the schooner Stephen Morgan?

Answer. I was on the bridge, navigating the steamer down the bay.

5. Int. What was the course of the steamer at four o'clock said morning? How was the wind, and what was the state of the weather and the sea?

Answer. Her course was south by west, the wind was southwest, and the weather was clear, the wind blowing strong, and the sea was very rough.

6. Int. Was the steamer's course changed after four o'clock? If so, how soon was it changed, what was the change, and what caused the change to be made?

Answer. It was changed after four o'clock, and the change was made when the red light of the schooner was reported. The change of course was to south-southwest, and it was changed because the schooner was bearing on the port bow south by east, and the object was to give the schooner plenty of room.

133 7. Int. What order did you give the man at the wheel when you made this alteration in the steamer's course, and what was done with the steamer's helm?

Answer. I told the man to keep her south-southwest, to give the schooner plenty of room, and the helm was altered to fetch the ship more to port.

8. Int. Who reported the schooner's red light; did you see it yourself; how much was it bearing on the steamer's port bow, and how far distant did you judge the schooner to be?

Answer. The man on watch on the top-gallant forecastle reported the light. I saw the light myself. It was bearing two points on the steamer's

port bow, and I judged the schooner to be distant from two to three miles.

9. Int. State if any further change was made in the steamer's course; if so, why it was again changed, and generally all that took place up to the moment the two vessels came into collision.

Answer. There was no further change in the steamer's course until the schooner starboarded her wheel, and then a change was made, the steamer's wheel being put hard aport, and the change was made to avoid any collision. When the steamer's helm was put hard aport, the schooner, coming so much faster than the steamer, caught her, and when she got close to us I sung out to the schooner to put his helm hard aport; and if he had done so there would have been no col-
134 lision whatever. He did not do it; he kept his helm hard astarboard, and in consequence of that he struck us on the port side, just forward of the bridge. I was on the bridge at the time the schooner's jib-boom came over my head, and then I jumped off the bridge on to the poop-deck.

10. Int. Was the bridge itself injured or carried away by the collision?

Answer. The bridge was broken in half and the port side knocked all to pieces.

11. Int. If the schooner had not starboarded her helm, would there have been, in your judgment, any necessity for the second change made in the steamer's course, or any danger of collision between the two vessels?

Answer. There would have been no necessity for such change, nor would there have been any danger of collision between the vessels.

12. Int. Did you give any order before the collision to stop or reverse the steamer's engines; if not, why was not such order given?

Answer. No such order was given, for the reason that if the engines had been stopped both vessels would probably have been sunk.

13. Int. How was the steamer heading at the moment of collision, and how was her helm?

Answer. She was heading from southwest to west-southwest, and her helm was hard aport.

135 14. Int. What was the direction of the blow from the schooner; was it or was it not a square blow; and how did the schooner head the moment after the collision, when the vessels separated?

Answer. It was a glancing blow, from aft forward, in that direction. The steamer was going off to port; the schooner put her helm hard astarboard, and struck her a glancing blow, as I have described. The moment after the collision the schooner headed the same way as the steamer; they then separated.

15. Int. Was the effect of the blow increased or lessened by the fact that the steamer's engines were kept going, her helm being at the same time hard aport?

Answer. It was lessened, in my opinion.

16. Int. In what part of the bay did this collision take place?

Answer. Off York Spit, the lower part of the bay.

17. Int. When did you first make out the vessel bearing the red light to be a schooner? In what general direction did she appear to be steering, and how was the wind for the schooner?

Answer. As soon as the red light was reported, I could see with the glasses distinctly that it was a three-masted schooner steering up the bay. His course ought to have been north from where she then was. The wind was from the southwest, on the schooner's quarter.

136 18. Int. At what distance, through the glass, ought the steamer's smoke-stack to have been visible to those on board the schooner?

Answer. They ought to have seen it all of two miles.

19. Int. Before and at the time of the collision were the steamer's lights in their proper places, and burning properly?

Answer. They were.

20. Int. Had anything been done to the lights during the night? If so, describe what had been done to them.

Answer. The lights had been trimmed at twelve and at four.

21. Int. State all that you ever saw in connection with the trimming of the lights.

Answer. I saw the boy and the boatswain passing forward from the lamp-room with the lights. They had a relieving-light to put in the box while trimming the side-lights. The lights were taken in at half past five o'clock, and were burning brightly.

22. Int. From your position on the bridge could you see how the lights or either of them were burning?

Answer. Only from the shade or reflection of them on the jib-boom guys; in that way I could see they were burning. The mast-head light you could see all the time, but the side-lights were hidden by the boxes.

23. Int. Did the steamer, after leaving the port of Baltimore,
137 meet with any accident or detention in the river or bay? If so, state what it was.

Answer. She stopped in the channel on account of two steamers passing; one of the Allan line. The tug-boat got a hawse to us and kept our bow up on account of the tide, and we steamed along down.

24. Int. Were either of the steamer's hawses broken at that time; and, if so, what was done with the broken hawse?

Answer. One was broken and the tug-boat kept it on board. We told him that the ship was going ahead and we could not stop on account of the hawse.

25. Int. Did you return the steamer Carolina to the port of Baltimore for repairs after the collision, and was any damage done to the steamer's hawses in warping her into the wharf; if so, what damage?

Answer. I did return her to Baltimore for repairs, and in warping her into the wharf there were two hawses broken that I know of.

Examination in chief closed.

Being cross-examined by the attorney for the defendants, the witness makes oath, deposeth, and saith as follows:

1. Cross-int. When did the Carolina leave Baltimore, and how many hours had you been on the bridge when the collision ocurred?

138 Answer. She left Baltimore in the morning, I believe, about seven o'clock. I do not know how many hours I had been on the bridge when the collision occurred.

2. Cross-int. State whether or not from the time of leaving the dock at Baltimore, up to the moment of collision, you were not on board the Carolina, employed for the express purpose of navigating her, and whether or not you were responsible for her navigation.

Answer. I was employed to navigate her, and was responsible for her navigation down the bay.

3. Cross-int. Who was responsible in the harbor and in the Patapsco River?

Answer. After the ship's anchor was up I was.

4. Cross-int. For what purposes did you leave the bridge of the Car-

olina during the time named, how often, and how long did you remain absent?

Answer. I left the bridge to eat, to go to the water-closet, and the like of that, and for a great many purposes. I can't say how often I left, nor can I say to a minute how long I was absent.

5. Cross-int. Where did you go to take your meals, how many did you take, and how long did each meal occupy?

Answer. We generally take three meals a day on board the vessels, and sometimes the meal would occupy fifteen minutes and sometimes a half hour; and when absent at meals the chief officer was in
139 charge of the deck. We went into the cabin to take meals.

6. Cross-int. What are some of the great many other purposes spoken of in your answer to the fourth cross-interrogatory?

Answer. I walked to keep my legs employed, on the poop. Standing on the bridge is tiresome, and when I left the bridge the chief officer would be in charge.

7. Cross-int. Where do you generally promenade when you leave the bridge of a vessel, for the navigation of which you are responsible?

Answer. On the poop deck.

8. Cross-int. How many hours does an ordinary watch last on shipboard?

Answer. Four hours.

9. Cross-int. What officer was with you on the watch on the night of the collision, between the hours of twelve and four?

Answer. The second officer.

10. Cross-int. Who relieved him, and at what time?

Answer. The chief officer. They generally call the watch ten minutes before the time, so that they may be out at eight bells.

11. Cross-int. Did the chief officer come on deck precisely at four o'clock?

Answer. The chief officer was out at four o'clock.

12. Cross-int. Did the second officer leave the deck exactly at four o'clock?

140 Answer. He left when the chief officer relieved him.

13. Cross-int. Did you or did you not state when you testified in this case before the district court of the United States that the first officer did not in fact come on deck until ten minutes after four o'clock, and that the second officer remained on deck until ten minutes after four in charge of the watch?

Answer. Not to my recollection.

14. Cross-int. You have said in your examination-in-chief that the lights were trimmed on that night at twelve and at four; state which officer was with you on the watch when the lights were trimmed at twelve, and which when they were trimmed at four?

Answer. The chief officer was on the watch when the lights were trimmed at twelve o'clock, and when they were trimmed at four the second officer was on watch.

15. Cross-int. Explain exactly what was done to each light when they were trimmed at four o'clock, by whom, and by whose order?

Answer. They were taken out of the box and a relieving light put in the place, taken to the lamp-room, picked up, I suppose, carried back and put in its place. It was done by my order and through the boatswain and boy. I mean my order given to the second officer.

141 Here adjourned to meet Monday, 7th April, 1873, at 10 o'clock a. m., and having met pursuant to adjournment, proceeded with the cross-examination of the witness, as follows:

16. Cross-int. What was the boatswain's name, and what was the name of the boy?

Answer. I do not know either of their names.

17. Cross-int. Do you mean that both of the side lights were taken down at once; if not, which was taken down first, and how long was each down?

Answer. No, I do not; the port light was taken in first. I cannot state how long each was down.

18. Cross-int. How long did the whole operation of attending to the lights, as you have described, take, and what time was it when they were all restored to their places?

Answer. I do not know how long it took, and I cannot tell precisely the time when they were restored to their places.

19. Cross-int. Do you then know, of your own knowledge, that anything at all was, in fact, done to the ship's lights at or about four o'clock; and if so, what?

Answer. I do. The lights were trimmed.

20. Cross int. How do you know they were trimmed?

Answer. I saw them carried forward, the relieving lights taken out, and these lights put in.

21. Cross-int. Is that all you know about it?

Answer. Yes.

142 22. Cross-int. How long was it after the first mate came on his watch that the schooner's light was seen?

Answer. That I cannot say.

23. Cross-int. What time was the schooner's light seen?

Answer. That I do not know to a minute.

24. Cross-int. Have you no idea of the time? If so, state.

Answer. Yes; it was from ten to fifteen minutes after four.

25. Cross-int. After being taken down and trimmed as you have described, how long had all the lamps been restored to their places before the schooner's light was reported?

Answer. About five minutes.

26. Cross-int. In answer to the 16th int. in chief you say that as soon as the red light was reported, you saw it distinctly, and that it was carried by a three-masted schooner. Do you mean that you saw it before the lookout reported it, and how did you then know it was carried by a three-masted schooner?

Answer. I did not see the light before the lookout reported it. I knew the schooner was a three-masted one by her fore and aft canvass, the way she was steering.

27. Cross-int. How was she steering?

Answer. Her course ought to have been north from her position.

143 28. Cross-int. If that schooner's course had been for York River, how would she have been heading when you first saw her?

Answer. She would have been heading about west-southwest.

29. Cross-int. If it had been for Gloucester River, how would she have been heading?

Answer. About northwest by north, for New Point.

30. Cross-int. Did you know where she was bound?

Answer. I did not.

31. Cross-int. How wide is the Chesapeake Bay off York spit?

Answer. That I can't tell; I never measured it.

32. Cross-int. You say that you have been a licensed pilot for twenty-nine years, navigating Chesapeake Bay, and do not know how wide the bay is off York spit?

Answer. Yes; I do.

33. Cross-int. How far was the Carolina off the western shore of Chesapeake Bay, when the red light was sighted?

Answer. It is a hard matter to tell in the night-time.

34. Cross-int. Was the red light to the eastward or westward of you when you first saw it?

Answer. It must be to the eastward when it bore south by east.

144 35. Cross-int. You have said that the course of the vessel bearing this light, when you first saw it, ought to have been north; did you certainly know what it was? If so, how?

Answer. Yes, because she was coming up the bay.

36. Cross-int. How did you know she was coming up the bay?

Answer. From the light she showed—the port light.

37. Cross-int. How long was it from the time you first saw the red light until she starboarded her helm, as you have described?

Answer. I do not know.

38. Cross-interrogatory. Had there been any change in the schooner' course from the time you first saw the light until she starboarded her helm?

Answer. Yes; in yawing about.

39. Cross-int. What tack was she on when you first made her out to be a three-masted schooner?

Answer. She had her port tacks aboard.

40. Cross-int. Did she change her tack before the collision; and, if so, when?

Answer. Not until she struck the steamer; the steamer put her about.

41. Cross-int. How was she heading when she struck the steamer?

145 Answer. That I cannot ascertain. I know how the steamer was heading.

42. Cross-int. How was she heading when she starboarded her helm?

Answer. That I do not know; she was bearing southeast of us.

43. Cross-int. Explain what you mean by yawing.

Answer. She was badly steered and thus yawed about.

44. Cross-int. Did she yaw more to the eastward more to the westward, and how many points did she yaw?

Answer. I could not tell that in the night-time.

45. Cross-int. What was the difference in her course when she had done yawing from what it had been before?

Answer. That I could not tell.

46. Cross-int. How far off was she when she starboarded her helm?

Answer. That is hard to tell in the night-time.

47. Cross-int. How many points was she on your port side at that time?

Answer. Four points.

48. Cross-int. Within how many points of the wind was the schooner sailing when she struck the steamer, the wind being, as you have described, southwest?

Answer. The wind being southwest, and the schooner hard astarboard with her wheel, would make ten points.

146 49. Cross-int. What point was the schooner heading at the time of the collision, if she was ten points west of north?

Answer. She must have been heading west.

50. Cross-int. How many points are there in the whole compass, and how many between west and north?

Answer. There are thirty-two in the compass, and from west to northwest is four points, and from northwest to north is four more.

51. Cross-int. What, then, did you mean by saying just now that west was ten points west of north?

Answer. If I did say so, I should have said eight points.

52. Cross-int. I then repeat the 49th cross-int. What point was the schooner heading at the time of the collision, if she was ten points west of north?

Answer. At about twenty minutes past four this collision took place, and I cannot state, at that time, how the schooner was heading.

53. Cross-int. While the schooner was yawing as you have said, did you at any time see her green light?

Answer. I never saw her green light at any time.

54. Cross-int. How far off was the schooner when you sung out, as you have stated in your examination-in-chief?

147 Answer. I should judge in the neighborhood of from forty to a hundred yards.

55. Cross-int. How long before that had she starboarded her helm?

Answer. I do not know exactly.

56. Cross-int. What was the speed of the steamer at the time of the collision, as near as you can come to it?

Answer. Between seven and eight knots.

(The 57th, 58th, and 59th cross-interrogatories and the answers thereto are here erased.)

60. Cross-int. You have already stated that from the time you first saw the schooner until the collision, she was sailing all the time on the port tack, and that when you first saw her, her course was about north, the wind about southwest and on her quarter; will you now state whether you watched the schooner all the time, and if you did, whether or not she changed her course before her helm was put hard astarboard, except for the yawing of which you have already spoken?

Answer. I watched her all the time she was yawing, but whether her helm was altered to either course I do not know until it was put hard astarboard.

61. Cross-int. In your answer to the 6th int.-in-chief you say that the steamer's course was changed after four o'clock, when the red

148 light of the schooner was reported, that that change of course was to south-southwest, and the object was to give the schooner plenty of room; you further state in your answer to the 9th int. in chief that there was no further change in the steamer's course until the schooner starboarded her wheel, and then a change was made; will you state why you made no change between the times when those two orders were given by you respectively?

Answer. I made no other change because no change was necessary.

62. Cross-int. Then do you mean to say that the yawing of the schooner did not so effect the relative positions of the two vessels as to make any change of course or speed, on the part of the steamer, either necessary or prudent?

Answer. Not as long as the port light of the schooner showed.

63. Cross-int. In answer to the 12th cross-interrogatory you say that the second officer left the deck when the chief officer relieved him; when did the chief officer relieve him?

Answer. I suppose within from four to ten minutes past four o'clock. I cannot come within a minute of the time, somewhere thereabouts.

64. Cross-int. In your answer to the 17th int. in chief you say, as soon as the red light was reported I could see with the glasses

149 distinctly that it was a three-masted schooner, steering up the bay; how did you know it was a three and not a two masted schooner?

Answer. One has three masts, and the other two; one has three fore and aft sails, and the other two.

65. Cross-int. Do you, then, mean that you saw the three masts?

Answer. No, I do not. I mean to say that I saw the three sails. The mast is hard to see; it is a very small object.

66. Cross-int. How far can you see, on such a night as the one in question, a mast against a white sail?

Answer. I do not know about the mast. I could not form any judgment about it.

67. Cross-int. In answer to the 9th int. in chief you say the schooner struck your ship on the port side, just forward of the bridge, and that you were standing on the bridge at the time that the schooner's jib-boom came over your head, and then you jumped off the bridge; you further say in answer to the 14th int. in chief that the schooner struck the Carolina a glancing blow from aft forward, and that the moment after the collision the schooner headed the same way with the steamer; will you explain, then, how the schooner's jib-boom could have come over your head?

150 Answer. I was on the port side of the bridge, the schooner going astarboard and we going aport; a few minutes before she struck, the jib-boom was over my head, and I jumped off the bridge.

68. Cross-int. On what tack was the schooner sailing when she sailed into you, and how fast?

Answer. I have already said that the schooner had her port tacks aboard until she struck us, and we put her about. I do not know how fast she was going.

69. Cross-int. In your answer to the 9th int. in chief you said the schooner, coming so much faster than the steamer, caught her; do you then mean to say that with a southwest wind, the schooner sailing on the port tack, and two to three hundred yards off, when she changed her course on the port side of the steamer, could, after so changing her course, and without shifting her sails, sail so much faster to the west or south of west than the Carolina, which was then steaming west-southwest to south by west at the rate of seven or eights knots an hour, as to catch her within a few minutes?

Answer. Yes.

Cross-examination closed.

Re-examined:

151 26. Int. Did you leave the steamer's bridge for any purpose between four o'clock of the morning of the 3rd of October and the time when the collision took place?

Answer. Not until I jumped off when the schooner's jib-boom swung over my head.

27. Int. How much water did the Carolina draw; and when the schooner's light was reported was the Carolina in her proper course and position in the bay for a steamer bound down?

Answer. She drew twenty feet water, and was in her proper position at that time.

28. Int. If the schooner, when reported and first seen by you, had been making for York River or Gloucester River, what light should she have shown?

Answer. Her green light, beyond a doubt.

29. Int. It being in testimony in this case that the schooner was bound for Georgetown, District of Columbia, what should have been her course at the time and place you saw her, and what light ought she to have shown you?

Answer. Her course should have been north, up the bay, and of course she ought to have shown us her port light—her red light.

30. Int. Did the schooner yaw so as to hide her red light at any time?

Answer. No; we could see it distinctly all the time.

152 31. Int. Could you tell in the night at a distance of one to two miles a change of a point or point and a half in the schooner's course?

Answer. No.

32. Int. After the schooner starboarded her helm, would it have been prudent to have stopped the steamer's headway?

Answer. No.

33. Int. In your twenty-nine years' experience as a pilot, have you ever had a collision before happen to any vessel under your charge?

(Question objected to.)

Answer. Never.

Re-examination closed.

Cross-examined:

70. Cross-int. Did you sound the whistle or ring the bell of the Carolina before the collision?

Answer. There was no whistle sounded & no bell rung.

Re-examined:

34. Int. Was there any answer or attention paid to your hail when you sung out to those on board the schooner to port their helm?

Answer. No answer made.

DANIEL T. EVANS.

153 Subscribed and sworn to before me this 7th day of April, A. D. 1873.

ROBT. LYON ROGERS,
U. S. Commissioner.

Erasures in the 12th direct answer and of 57th, 58th, and 59th cross-interrogatories & answers made by consent of undersigned.

T. W. HALL,
Proctor for Joseph Good.
F. W. BRUNE,
Proctor for Schr.

I, Robert Lyon Rogers, a commissioner as aforesaid, do also certify that the reason for taking the foregoing deposition of Daniel T. Evans is because of the agreement and consent that the same should be taken in manner and form as the same has been taken by the attornies of the parties to said cause, appellant and appellee, respectively; and I hereby further certify that Thomas W. Hall, jr., esq., attorney for the appellant, and Arthur George Brown, esq., attorney for the appellees, were both present before me at the taking of the said deposition, and consented to the taking thereof in manner and form as the same has been taken. And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn according to law to testify

154 the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said

deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of the said cause.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this seventh day of April, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] ROBT. LYON ROGERS,
U. S. Commissioner for Maryland.

Agreement of counsel in reference to leaving out of this record certain papers, &c.

JOSEPH GOOD
vs.
SCHOONER STEPHEN MORGAN.

In preparing the record for the Supreme Court of the United States in this case the clerk will insert the "certificate of survey" in its proper place and omit the itemized bill of James Hooper & Co. for disbursements on account of the collision and the accompanying bills and
155 vouchers, also the charter-parties, testimony, and agreement as to sailors' board-bills, and the following depositions, viz: James Hooper, Capt. Sanford, B. C. Buck, Waggner, Wyeth, and Lewis, and insert in lieu thereof the following agreement:

All the testimony, depositions, vouchers, and exhibits taken, produced, and used at the trial of this cause, both in the district and circuit courts, showing that the repairs found necessary, as appears by the foregoing certificate of survey, for the injuries sustained by the said steamer by the collision, were actually made, and the expenditures and disbursements therefor were reasonable and necessary, and that the work of repairing said steamer was properly and expeditiously conducted, are omitted from this record by the consent and direction of the proctors for the respective parties.

Exclusive of the mechanics' bills for repairs, other items of loss and expense were proved and claimed on behalf of the said steamer, as incurred in consequence of said collision, viz, inward and outward pilotage, towage, wharfage, watching, labor, coal, (for donkey-engine,) bargehire, subsistence of officers and crew on shore during progress of repairs, and the libellant's damages for loss of time and profits in consequence of the collision being assessed by the court at the amount
156 of freight the said steamer would have earned during the period of detention for repairs, less the expenses of earning it, the total loss and damage sustained by the libellant, as owner of said steamer, by reason of said collision, and the repairs and loss of time occasioned thereby, were assessed by the court at ten thousand seven hundred and ninety-one dollars and twenty-two cents, ($10,791.22.)

The schooner's damages resulting from the same collision were at the same time assessed by the court at four hundred and fifty-eight dollars and twelve cents, ($458.12.)

T. W. HALL, JR.,
Proctor for Joseph Good, Libellant.
BROWN & BRUNE,
Proctors for Schooner Stephen Morgan, Respondent.

OCTR. 29TH, 1874.

The certificate of survey in foregoing agreement is as follows, to wit:

(Copy.)

SURVEYOR'S OFFICE,
Baltimore, October 26th, 1872.

I, the undersigned, surveyor, duly appointed by the marine in-
157 surance companies in Baltimore, and agent of Board of Under-
writers of New York, to examine and survey vessels and cargoes, with Robt. Ashcroft, master-carpenter, & Jas. Smith, mr. boiler-maker, do hereby certify that at the request of Macgarr, master of the steamer or vessel called the Carolina, of Hull, Eng., did, on the fifth (5th) of October, '72, and at sundry times thereafter, repair on board of said steamer, then lying in the port of Baltimore, having returned to this port for repairs, being damaged by collision with another vessel in the Chesapeake Bay, on her voyage from this port bound to Queenstown, Ireland, for orders.

Finding the damage to extend below the deck, recommend the *the* coal on port side of forward bunker, also cargo (corn) from port side of middle bin, discharged.

Oct. 6th being Sunday no work was done.

October 7th found the following damages, viz: One boat on port side badly stove, (planks and timbers broken,) the chocks of this boat broken and split, and unfit for further use; two sets of boats' davi*d*s bent, and belaying-cleets broken off the third set of davi*d*s. Poop-deck and side-planking on port side broken and torn up in several places; the bridge across the fore-part of poop broken, iron standards and iron rails around bridge bent, broken, and torn out of deck; iron railing around fore-part of poop bent and broken. Doors and partitions
158 of three state-rooms in poop on port side, and one state-room and water-closet on starboard side, with lining, berths, &c., &c., broken, split, and otherwise injured; iron partition in cambo*u*se-house broken. Two sheets of iron bulwarks stove in and broken. The upper strake (or shear strake) and angle-iron in water-way driven in and bent over on the deck. Fore-yard broken. Fore-sail torn and covering of sail destroyed; main rail, fly rail, and waist badly broken up on port side, and several of the iron stays to main rail bent.

Oct. 8th found about 3,000 bushels of corn and 40 tons of coal discharged; the corn being perfectly dry and sufficient of both out to get at the work, recommend no more discharged. On cleaning away the broken work in the state-rooms, found four of the angle-iron (quarter-round) frames of the poop broken on port side. Three side lights on starboard side, forward side, broken, reported done by the collision.

10th, found one new 6-inch hawser broken and badly chafed, one 4-inch warp (about half worn) broken and chafed; damage to these ropes caused by getting ship into the wharf, she having taken the ground.

We therefore recommend as follows: The damaged boat to be repaired, boats' chock to be new; three sets of boats' davi*d*s to be repaired; twenty-two strakes of decking from 5 @ 27 feet long on poop, new main rail 12 in. by 3½ and 44 feet long. Fly rail 9 by 3 inches, 42 feet long, fly
159 waist 50 feet long and 15 inches wide, and a bridge across poop. The iron standards to support bridge with its railings, and railing around fore-part of poop to be repaired. Joiners' work of three state-rooms, cambo*u*se-house in the center, water-closet and one state-room on starboard side, front of poop, with side of poop on port side, to be repaired. New iron partition in cambo*u*se-house 7 ft. 6 ins. by 5 ft., (No.

14 iron.) Two sheets of bulwarks, port side, 3 ft. 6 in. by 7 ft. 10 in., ($\frac{5}{16}$ iron,) one upper or shear strake, port side, taken off, strai'tened to shape, and replaced. Water-way piece (angle-iron) 5 ft. 6½ ins. by 8½ ins., (½ in. thick.) Two (angle-iron) frames on port side of poop, fore-part 10 ft. 6 in. long & 6 by 4 ins., (½ iron;) two others of same frames to be repaired without removing; also, to be repaired, several of the iron stays to main rail & bulwarks; new, three side lights. Fore-yard and covering of fore-sail, fore-sail to be repaired; water-closet pipes, &c., to be repaired; the new decking to be caulked, and all new work to be painted as before. We also recommend a new 6-inch hawser 90 fathoms long, ($\frac{1}{3}$ off for new,) in lieu of damage to ropes, the ship to retain the old ropes.

October 25th, went on board to make final survey and found all the work recommended above completed in a substantial and mechanical manner, except some painting on port side to state-rooms and
160 front of poop, being unable to finish on account of rain. Captain Macgaar desires the paint to be put on board and charged in painters' bill, and put on by the crew when the weather permits, which we accede to.

We therefore do certify that the said steamer Carolina is now tight, staunch, and seaworthy, and in every respect in condition to proceed on her intended voyage.

(Signed) J. L. SANDFORD,
Marine Surveyor.
" ROB. ASHCROFT,
Mast. Ship Carpenter.
" JAS. SMITH,
Mast. Boiler-Maker.

STATE OF MARYLAND,
City of Baltimore, to wit:

Be it known that on the day of , in the year of our Lord eighteen hundred and , before me, the subscriber, a notary public, by letters-patent, under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, personally appeared , and made oath according to law that all the facts, matters, and things mentioned in the foregoing certificate or instrument of writing, to which subscribed name, as' true as therein stated.

In testimonium veritatis.

161 *Decree of circuit court.*

In the circuit court of the United States for the fourth circuit, district of Maryland.

JOSEPH GOOD
vs.
THE SCHOONER STEPHEN MORGAN.

This cause standing ready for hearing, & the proceedings & evidence therein, & the arguments of the proctors for the respective parties having been read, heard, & duly considered, & it appearing to the court that the several parties mentioned in the decree of the district court have respectively sustained, by the collision therein referred to, the several losses mentioned in said decree, (except as to the loss sustained by the owner of the steamship Carolina, therein referred to, which said

loss is found to be ten thousand seven hundred and ninety-one $\frac{22}{100}$ dollars) ($10,791.22;) and that the said collision was caused by the mismanagement & fault of those in charge of the said schooner Stephen Morgan & also of those in charge of the steamer Carolina, therein referred to, & that all the losses and damages arising therefrom & from this appeal ought to be divided equally, so that the libellant shall bear one-half thereof, and the stipulators for the said schooner shall pay the other half thereof: It is thereupon, this third day of October, A. D. 1874, adjudged, ordered, & decreed that the said decree of the
162 district court, be, & the same is hereby, affirmed as regards all but the amount apportioned or awarded by said decree to the owner or owners of the steamer Carolina, & in lieu of such amount it is adjudged, ordered, & decreed that Frederick Davey, William E. Hooper, and William J. Hooper, the stipulators for the said schooner Stephen Morgan, shall, on or before the tenth day of October, A. D. 1874, pay to the said Joseph Good, the libellant in this cause, or bring into court for his use, the sum of five thousand one hundred & sixty-six $\frac{55}{100}$ dollars, ($5,166.55,) with interest from the twenty-fifth day of January, A. D. 1873. And it is further adjudged, ordered, & decreed that the said Frederick Davey, William Hooper, & Wm. J. Hooper shall pay one-half of the costs of appeal in this court, to be taxed by the clerk.

HUGH L. BOND,
Ct. Judge.

From which said decree, so as aforesaid rendered, the claimants of the schooner Stephen Morgan, by their proctors, in open court here, have prayed an appeal to the next term of the Supreme Court of the United States, to be held at Washington on the second Monday in October, 1874; and to him it is granted.

Thereupon it is ordered by the court here that the record & proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court; and the same is transmitted accordingly.

Appeal-bond.

163 Know all men by these presents that we, Frederick Davey and William E. Hooper, are held and firmly bound unto Joseph Good in the full and just sum of five hundred dollars, lawful money, to be paid to the said Good, his representatives or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this twentieth day of October, eighteen hundred and seventy-four.

Whereas lately at a circuit court of the United States for the fourth circuit, in and for the district of Maryland, begun and held at the city of Baltimore on the first Monday in April, in the year eighteen hundred and seventy-four, in a suit depending in the said court between the owners and claimants of the schooner Stephen Morgan, appellants, and the said Joseph Good, appellee, a decree was rendered and passed against the said schooner, and the said owners and claimants having entered and obtained an appeal to the Supreme Court of the United States, to be held at Washington on the second Monday of October, eighteen hundred and seventy-four:

Now, the condition of the above obligation is such, that if the said owners and claimants of the said schooner Stephen Morgan shall prose-

cute their said appeal to effect, and answer all damages and
164 costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

FREDERICK DAVEY. [SEAL.]
WILLIAM E. HOOPER. [SEAL.]

Signed, sealed, and delivered in the presence of—
F. M. SHIPLEY.

Bond approved 20th October, 1874.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy of the record and proceedings of the circuit court of the United States for the 4th circuit in and for the Maryland district, in the cause aforesaid, I have hereunto subscribed my name and affixed the seal of the said circuit court this third day of November, A. D. 1874.

[SEAL.]

JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 232. Frederick Davey et al., claimants of the schooner Stephen Morgan, appellants, vs. Joseph Good. Maryland C. C. U. S. Filed 7th November, 1874.

In the Supreme Court of the United States.

No. 232 October Term 1876.

FREDERICK DAVEY *et al.*, *Appellants*,
Claimants of the Schooner "Stephen Morgan,"

vs.

JOSEPH GOOD.

APPELLANTS' BRIEF.

F. W. BRUNE,
ARTHUR GEO. BROWN,
Proctors for Appellants.

In the Supreme Court of the United States.

No. 232 October Term 1876.

FREDERICK DAVEY *et al.*, *Appellants*,
Claimants of the Schooner "Stephen Morgan,"

vs.

JOSEPH GOOD.

APPELLANTS' BRIEF.

I.

Statement of the Case.

This suit grows out of a collision between the British iron screw steamer "Carolina," of 1100 tons burthen, with engines of 140 horse-power (pp. 2, 23), and the schooner "Stephen Morgan," of Jersey City, N. J., of about 259 tons burthen (p. 5), which occurred at about half-past four o'clock in the morning of October 3, 1872, a little above York Spit in the lower part of Chesapeake Bay; and it presents the very unusual case of a libel on the part of a steamer of such magnitude and power, seeking, as the actor in the controversy, to recover for damages resulting from a collision with a sailing vessel so inferior in size.

The steamer, with a cargo of corn in bulk, was on a voyage from Baltimore to Queenstown, Ireland (p. 23); and the schooner was, without a cargo on board, bound from New York for Georgetown, D. C. (p. 6).

The owner of the steamer, Joseph Good, filed the libel, and has been the sole actor in this controversy. The damage sustained by

the schooner, amounting to $458.12 (p. 62), would hardly have justified the expense of a libel on her behalf; but her losses are referred to in the Answer (p. 8), and by agreement of the proctors for the respective parties (p. 62) the amount thereof was fixed as above, and included with the testimony in the cause to be considered by the Court.

All the proceedings therefore originated with the appellee, and were taken at his instance, and the decree should stand upon or fall with the case made out by his libel and testimony.

The following are the main allegations of fact which the libel sets forth, and which the appellee by the depositions of his witnesses has sought to establish, and they constitute the case to which he is committed, and upon which his claim to relief must rest, viz:

1. The *red light* of the schooner was first seen, and the schooner was then to the southward of the steamer, and was heading up the bay; and said red light, when first seen, bore about a point on the port bow of the steamer, and was distant from two to three miles.

See depositions of appellee's witnesses, Ramsay (the lookout), 5th and 6th Ans. p. 11; McAvoy (who was at the wheel), 8th Ans. p. 13; Fowler (chief officer), 13th and 14th Ans. p. 15; Evans (pilot), 8th Ans. pp. 53, 54.

2. At that time the steamer's speed was about eight knots (Fowler, 12th Ans. p. 15; McAvoy, 3d Cross-ans. p. 14; Evans, 56th Cross-ans. p. 59), and no change or diminution in the speed of the steamer was made or ordered until after the collision.

Fowler, 29th Ans. p. 17.

Evans, 12th Ans. p. 54.

3. The steamer was heading south by west when the schooner's light was first seen (Evans, 5th Ans. p. 53), and thereupon the steamer's course was changed only one point to south-southwest, "and the object was to give the schooner plenty of room."

Evans, 6th and 7th Ans. p. 53.

McAvoy, 6th Ans. p. 12.

4. The schooner when first seen must necessarily (according to the theory of the libel and appellee's witnesses) have been sailing on a course to the east of north, for she showed only her red light; and to shut out her green light from those on board the steamer in that position and at that distance, it was impossible that the schooner could have headed nearer to the north than north by east.

The wind was favorable for the schooner, blowing strongly and steadily from about the southwest; the night was clear overhead and the water was rough, and the schooner was sailing on her port tack.

Evans, 5th and 17th Ans. pp. 53, 54.

5. The two vessels (according to appellee's theory) continued to sail on diverging courses, as above indicated; the steamer proceeding down the bay at full speed heading south-southwest, and the schooner heading up the bay, and *showing all the time only her red light* (Evans, 53d and 62d Cross-ans. p. 59. Fowler, 23d Ans. p. 16); indicating to those on the steamer that she was pursuing her easterly course as above shown, while the steamer kept going to the westward. Every moment therefore, on the appellee's theory, that elapsed after the schooner was first sighted, carried the two vessels farther apart, on courses which, having been divergent from the first, involved no risk of collision.

6. All went well (according to appellee's theory and statements) until the two vessels had so far progressed on their said respective courses that they were nearly abreast of each other, when the schooner (according to the same theory) suddenly starboarded her helm, swept round more than $\frac{1}{4}$ of the compass, and changed her course from east of north to the west or south of west; and although she must then, according to the testimony of appellee's witnesses, have been sailing within two or three points of the wind (which was about southwest), and without changing her tack (Evans, 39 and 40 Cross-ans. p. 58), the schooner went so much faster than the steamer, which she was pursuing, that in a few moments she ran the steamer down.

Appellee's witnesses attempt to account for the collision in that way, and their testimony on the subject is as follows:

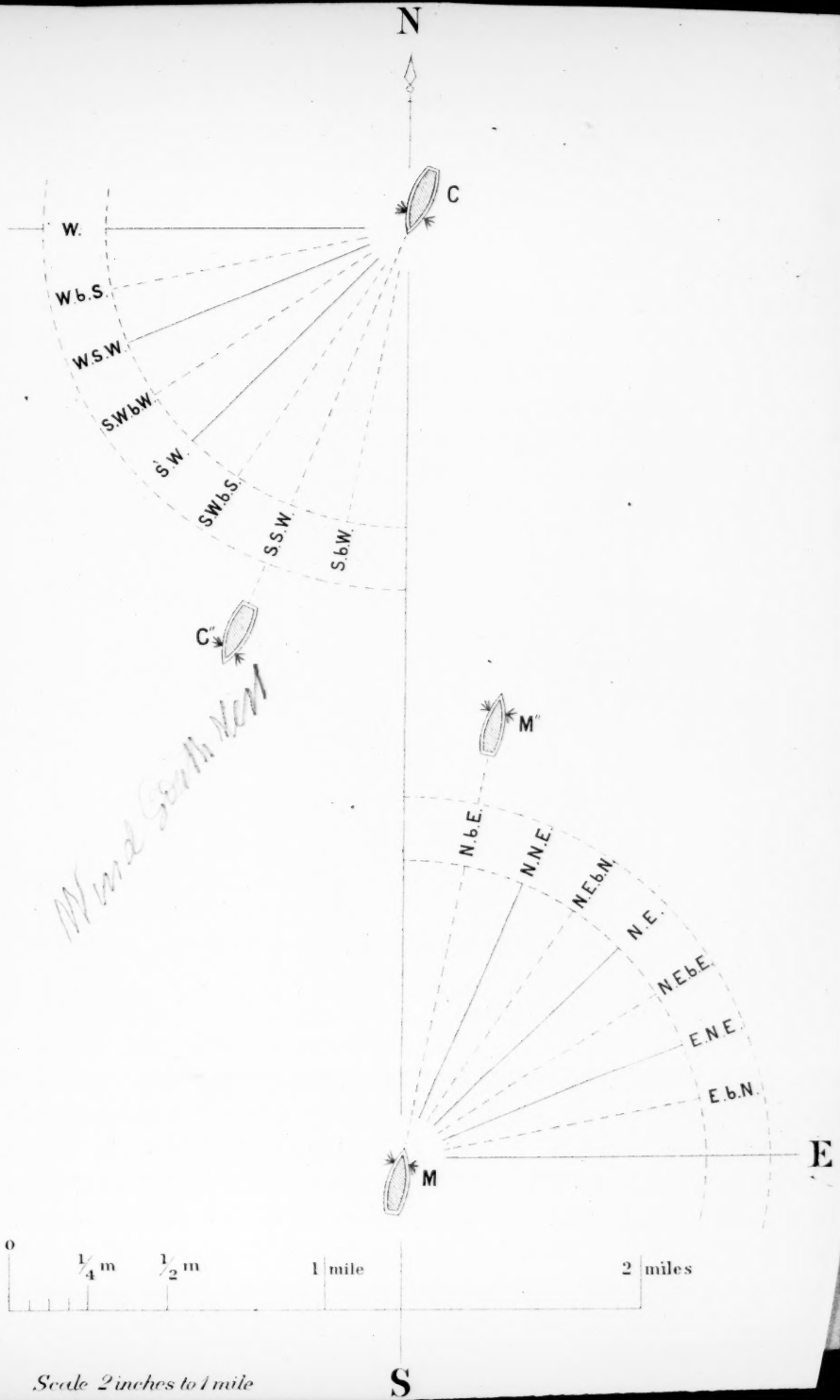
Evans, the pilot in charge, after testifying in answer to the 6th and 7th interrogatories (p. 53) that the steamer's course was changed to S. S. W. when the schooner was first seen, says in answer to the 9th Int. p. 54:—"There was no further change in the steamer's course until the schooner starboarded her wheel, and then a change was made, the steamer's wheel being put hard a-port, and the change was made to avoid any collision. When the steamer's helm was put hard a-port, *the schooner, coming so much faster than the steamer, caught her.*"

In answer to the 14th Int. p. 54 the same witness says:—"It was a glancing blow," (given by the schooner), "from aft forward, in that direction. The steamer was going off to port: the schooner put her helm hard a-starboard, and struck her a glancing blow, as I have described. The moment after the collision the schooner headed the same way as the steamer; they then separated."

And in answer to the 69th Cross-int. (p. 60) the same witness testifies that, "with a southwest wind, the schooner sailing on the port tack, and two to three hundred yards off when she changed her course on the port side of the steamer, could, after so changing her course, and without shifting her sails, sail so much faster to the west or south of west than the Carolina,—which was then steaming west-southwest to south by west, at the rate of seven or eight knots an hour,—as to catch her within a few minutes."

Evans also says in answer to the 46th Cross-int. (p. 58), that when the schooner starboarded her helm she was four points on the steamer's port bow. Ramsay, the lookout, says, 8th Answer (p. 11), "I made out the vessel about ten minutes after I saw the light, and when she was three or four hundred yards from us. I made her out to be a three-masted schooner. *Her course was about north-northeast.*" Ramsay further says in his 10th Answer (p. 11), "When she" (the schooner) "was about five points on our port bow, she hauled up towards us about a point": and in his 11th Answer he says, "the schooner sailed on and struck us right abeam."

McAvoy, the man at the wheel, says in his 9th, 10th and 11th Answers (p. 13), "There was other change of the steamer's course. The pilot ordered her to be kept hard a-port. The order was given about twenty-five minutes past four, and the red light was at that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time about six points on our port bow. The schooner put her helm hard down and ran into us."

In the 24th Int. (p. 14), the same witness is asked: "After the pilot ordered you to put the steamer's helm hard a-port, and at the time of the collision, how was the steamer heading?" Answer: "About southwest."

Fowler, the chief officer of the steamer, in his 20th Answer (p. 16), says: "I observed the change" (in the schooner's course) "between half-past four and five-and-twenty minutes to five, and her position was about two points before the beam of the steamer. Her distance from the steamer at the time of the change of course was about two hundred yards."

See also the same witness's answers to the 1st and 4th Cross-ints. (p. 18).

As to all the allegations of the libel concerning the causes and circumstances of the collision, the Answer, in its third article (p. 5), replies and pleads that "the same are therein in great part *falsely and untruly alleged and pleaded*"; and then after stating the case upon a totally different theory of the facts, and one absolutely at variance and irreconcilable with the theory of the appellee detailed above,— the Answer concludes (7th Article p. 8) as follows: "That all and singular the premises are true. Wherefore the respondents pray that this Honorable Court will pronounce against the demands of the libellant in his aforesaid libel set forth, with costs."

This raises directly the question whether or not the appellee has made out his case. Appellants claim that it is impossible that the collision could have been caused by the schooner running into the steamer under the circumstances detailed in the libel, and in the testimony in the record offered in support of it; or upon any theory which assumes that the schooner showed only her *red light* to those on board the steamer: and in demonstration thereof they beg leave to refer to the annexed diagram, and the accompanying explanation:—

Letter C on the diagram represents the position of the steamer when those on board first saw the schooner's red light and put the steamer on a south-southwest course.

Letter C″ on the diagram represents the position of the steamer after sailing one mile and a half on a south-southwest course.

Letter M on the diagram represents the position of the schooner when first seen (as claimed) by those on board of the steamer.

Letter M″ on the diagram represents the position of the schooner after sailing one mile and a half on the most northerly course possible for her to sail and show the red light only to those on board of the steamer.

Had the vessels sailed, as represented by the testimony of those upon the steamer, the distances and courses as represented upon the diagram, after each of them had sailed one mile and a half from their first positions respectively shown upon said diagram, they would be nine-tenths of a mile apart from each other, as proved by reference to Bowditch's Navigator, twenty-fifth edition, table one, page four, under the heading, "Difference of Latitude and Departure for One Point." One mile sailing on a course north by east gives two-tenths of a mile departure; therefore one and a half mile's sailing for the schooner gives three-tenths of a mile departure from the meridian or north and south line.

Table one, page eight, in same book—one mile sailing on a south-southwest course gives four-tenths of a mile departure, therefore one and one-half miles sailing by the steamer gives her six-tenths of a mile of departure from the meridian or north and south line.

The sum-total of the departures of the two vessels would be nine-tenths of a mile, which is the distance they would be from each other at the points C″ M″ on diagram.

For full explanation of said tables, see page four of preface "Bowditch's Navigator," third paragraph from top of said page.

For explanation of term "departure," see paragraph six on page fifty-two "Bowditch's Navigator."

On page fifty-three is a table which shows the turning of points into degrees and minutes, then by use of table two the departure may be ascertained to be the same as by use of table one with points.

In the foregoing diagram and explanation the speed of the schooner is assumed to be about the same as the speed of the steamer, which is in accordance with the fact as proved.

If the two vessels were three miles apart when the schooner's red light was first seen from the steamer, the distance between

them at the points C″ and M″ on the diagram would have been, as shown in and by the explanation to the diagram and Bowditch's Navigator therein referred to, nine-tenths of a mile.

If they were only two miles apart when the schooner's light was first descried, then the distance between them at the points C″ and M″ on the diagram would have been, by the tables above referred to, six-tenths of a mile.

So then, on the most favorable theory possible for the appellee (viz., that the two vessels when the schooner's red light was first seen were only two miles apart, and that the schooner's course was as near to the north as was consistent with shutting out her green light), the schooner must necessarily have been six-tenths of a mile east of the steamer when she is charged with having suddenly starboarded her helm and run into the steamer.

Appellants claim, therefore, that the whole case set up by the appellee, and which his witnesses have attempted to sustain, is manifestly untenable, and in fact impossible.

The indefinite charge made in the libel (p. 2) against the schooner of "yawing considerably and steering wildly," is, as appellants maintain, sufficiently disposed of by the testimony of appellee's own witnesses. Evans, the pilot, testified in reply to the 44th Cross-int. (p. 58), that he could not tell whether the schooner yawed more to the eastward or more to the westward, nor how many points she yawed; and in answer to the 45th Cross-int., that he could not tell what was the difference in her course when she had done yawing from what it had been before. The same witness was asked in the 53d Cross-int. (p. 59), "*While the schooner was yawing*, as you have said, *did you at any time see her green light?*" Answer: "*I never saw her green light at any time.*"

The 61st and 62d Cross-ints. (p. 59), with the answers of the same witness (Evans), are as follows:

61st Cross-int. "In your answer to the 6th Int.-in-chief you say that the steamer's course was changed after four o'clock, when the red light of the schooner was reported; that that change of course was to south-southwest, and the object was to give the schooner plenty of room; you further state in your answer to the 9th Int.-in-chief that there was no further change in the steamer's course until the schooner starboarded her wheel, and then a change was made.

Will you state why you made no change between the times when those two orders were given by you respectively?"

Answer. "*I made no other change because no change was necessary.*"

62d Cross-int. "Then do you mean to say that the yawing of the schooner did not so affect the relative positions of the two vessels as to make any change of course or speed on the part of the steamer either necessary or prudent?"

Answer. "*Not as long as the port-light of the schooner showed.*"

And when re-examined-in-chief, the same witness was asked (p. 61):

30th Int. "*Did the schooner yaw so as to hide her red light at any time?*"

Answer. "*No, we could see it distinctly all the time.*"

Ramsay, the lookout on the steamer, says nothing about this alleged "yawing" (pp. 11, 12); nor does McAvoy, the man at the wheel (pp. 12, 13, 14). They each and both testify that the schooner made but the one change in her course before referred to, viz: when it is alleged that she starboarded her helm and ran into the steamer.

Fowler, the only other witness for appellee who testifies as to the schooner's course, seems in his 20th and 21st Answers (p. 16) to mean to say that the "yawing" of which he speaks was only a part of and simultaneous with the manœuvre by means of which the schooner is charged with changing her course and running into the steamer. The same witness in his 23d Answer (p. 16) says he too only noticed the red light.

On the other hand, the statement of the case made by the claimants of the schooner, the appellants here, in their Answer (p. 5) is, as required by the 27th Rule, "full and explicit."

After objecting and pleading (as already shown) that the facts relating to the collision are for the most part "falsely and untruly alleged and pleaded" in the libel, the Answer (pp. 6, 7 and 8) sets up a case which, in connection with the depositions of appellants' witnesses, is, in substance, as follows:—

On the morning in question (3d October, 1872) the master of the schooner, whose watch then expired, went below at 4 o'clock, and at that time the course of the schooner was north by west ½ west.

Van Cleaf, 3d Ans. p. 39.

Worden, 3d Ans. p. 35.

At 4 o'clock the first mate, Letts, came on deck and took charge, with one man who was the lookout and one at the wheel.

The wind was blowing a fine breeze from about S. W. by W., the weather was clear overhead, and the schooner had nearly all her sails set and was on the port tack, and her lights were duly set and burning brightly.

About ten minutes after 4 o'clock, and before the steamer's light was seen, the course of the schooner was changed to N. by W.

Wolfe, 5th Ans. p. 31.

Letts, 4th Ans. p. 35.

The mate and the lookout both saw the steamer's white masthead light about the same time. It was to the northward and bore about one point on the schooner's starboard bow, and it appeared to be distant from $1\frac{1}{2}$ to 2 miles.

Letts, 5th Ans. p. 36.

Pope, 3d Ans. p. 27.

Wolfe, 6th Ans. p. 31.

As only the white light of the steamer was seen, it was supposed to be borne by a vessel at anchor, and the mate ordered the man at the wheel to let the schooner luff about a point, which brought the light to bear about two points on the schooner's starboard bow. The schooner was then steadied and ran on a little way. Fearing, however, that the schooner might not clear the vessel she was approaching, the man at the wheel was ordered to luff a little more, so as to allow plenty of room. Very soon after the last mentioned order, and about seven or eight minutes after the bright light was first seen, the two vessels being then very close together, the mate, in the hope of thereby possibly avoiding a collision, ordered the helmsman to put his wheel hard a-port. At that moment the captain rushed on deck, and looking under the boom, saw the light of the steamer, and thereupon countermanded the mate's order, which had not been carried into effect, and ordered the wheel to be put hard down, which was immediately done.

Almost immediately after the schooner's wheel had been put hard down, the collision occurred. At the moment of collision

the schooner was heading about west by north half north ; she was coming into the wind and her sails were shaking.

The steamer was always on the starboard side of the schooner ; and the changes of course made on the schooner, until and including the last one, were made with the object and direct tendency to bring the light of the steamer more and more on the starboard side of the schooner, and to increase the distance between the two vessels. The red light of the schooner having been placed on her port side as required by law, and the steamer being always on her starboard side, it was impossible for those on the steamer at any time to see the red light of the schooner, but her green light must have been plainly visible to them.

There was no change of the schooner's sheets from the time the mate took charge until the collision, and the schooner was sailing all that time on her port tack.

Answer, pp. 6, 7, 8.

Depositions of Pope, p. 27 ; Wolfe, p. 31 ; Letts, p. 35.

Such are the two conflicting and absolutely irreconcilable accounts of this collision set out in the pleadings and sustained by the witnesses of the respective parties.

II.

The appellants contend that the decree (pp. 64 and 65) is erroneous, in that it requires the stipulators for the schooner Stephen Morgan to pay to Joseph Good, the libellant in this cause, the sum of $5,166.55, with interest from January 25th 1873, and one-half of the costs, because :

1. The libellant has not established his case as he has set it up in his libel and attempted to prove it ; and because that case so set up is, as appellants contend, untrue, and impossible.

2. And because, as appellants also contend (*post* p. 16), the changes of course which are admitted to have been made by the schooner did not in any respect baffle or embarrass the steamer, were rendered apparently necessary by the persistency of the steamer in bearing down at full speed upon the schooner and crossing her bows, and are not, in view of the real facts of the case, to be imputed to the schooner as a fault which makes her liable to the steamer in damages.

III.

1. The burden of proof rests upon the appellee in this case in order to shift the blame of this collision from itself upon the schooner, because by law the steamer had to perform the active duty "to keep out of the way of the sailing vessel," while the duty of the latter was entirely passive (The Colorado, 1 Otto 702), and because the owner of the steamer is the actor and sole complainant in this controversy.

2. The steamer comes into this court as a wrongdoer, by her own confession. The decree below (p. 65) recites "that the said collision was caused by the mismanagement and fault of those in charge of the said schooner Stephen Morgan, and also of those in charge of the steamer Carolina"; and from that decree no appeal has been taken on the steamer's behalf.

The Roarer, 1 Blatch. C. C. 1.
The Quickstep, 2 Bissell 292.
The Quickstep, 9 Wall. 672.

3. This wrongdoer, then, having the burden of proof upon her, comes into court with a complaint which appellants have endeavored to demonstrate (*ante* pp. 2-7) to be untrue in all essential particulars, and impossible.

And even if the theory of the case advocated by the appellee were possible, the Court could not adopt it "without coming to the conclusion that the appellants' witnesses have committed wilful perjury" concerning the course and proceedings of their own vessel,—matters which are necessarily within their own knowledge.

The Wenona, 19 Wall. 57.

4. If the Court finds that the libellant's case, substantially as he has stated and attempted to prove it, is not the true case, the libel must be dismissed, and the libellant cannot recover. Neither can he recover on admissions of fault made by the respondent in his answer and proof, if such answer and proof are contrary to and inconsistent with the theory of the case set up and maintained by the libellant.

This is now the settled law of the English admiralty. Mr.

Lowndes, in his treatise on Collisions at Sea, states it fully on pp. 205, 6, 7 and 8 of that work. At page 207 he remarks: "The Court will proceed *secundum allegata et probata*, even though a failure of substantial justice in the particular case be the result.

"Thus, where it was alleged in the petition that the vessel proceeded against was in fault for starboarding her helm, and it was proved that she was in fault for not keeping a sufficient lookout, but that in fact she did not starboard her helm, the plaintiff was not allowed to recover (North American, Swabey 358).

"The principle of this decision was adopted in Privy Council in the case of The Ann, 1 Lush. 56."

Mr. Lowndes proceeds then to say at p. 208:—"This rule applies, however, only to the plaintiff's case, not to that of the defendants; for the reason of the rule applies only to the party on whom lies the burden of proof. An erroneous allegation of the mode in which the injury occurred, made by way of answer to a libel, does not narrow the issue down to the particular fact alleged, so as to entitle the complaining party to recover if the proof of it should fail. *He must rely upon the establishment of his own case, and not upon the failure of his adversary, and must succeed on the truth of his own allegations, or not at all.*"

These remarks and conclusions of the text-writer are fully sustained by the decisions of the Privy Council in the cases of—

The North American, Swabey 358.

The Ann, 1 Lush. 55.

The East Lothian, 1 Lush. 241, 249.

The Haswell, Br. and Lush. 247.

(See in the last case opinion of Dr. Lushington, pp. 250, 251, affirmed by Privy Council, p. 252).

5. In this country there is some conflict between the reported decisions of the lower courts on the points set forth in the last paragraph; and this Court was equally divided in a case directly involving them heretofore appealed. It is proper, however, to remark that the cases in this country were before the decisions of the Privy Council cited above.

Judge Ware, in the case of Jenks *vs.* Lewis, 1 Ware 51, remarked (p. 52): "The rules of pleading in admiralty do not

require all the technical precision and accuracy which is necessary in the practice of the courts of common law. But they require that the cause of action should be plainly and explicitly set forth, not in any particular and sacramental formula, but in clear and intelligible language, so that the adverse party may understand what is the precise charge he is required to answer, and make up an issue directly upon the charge. The evidence must be confined to the matters put in issue by the parties, and the decree must follow the allegations and proofs."

To the same effect are the decisions of the same Judge in —

The William Harris, 1 Ware 367, 369.

Pettingill *vs.* Dinsmore, Davies Rep. 208, 211, 212.

Judge Story, too, in the case of The Boston, 1 Sumner 328, 331, decided to the same effect as Judge Ware, quoted above.

See also Campbell *vs.* The Uncle Sam, 1 McAll. 77, 78.

The Transport and W. E. Cheney, 1 Ben. Dist. Ct. 86, 87, 88.

The Havre and Scotland, 1 Ben. Dist. Ct. 295, 299.

The H. P. Baldwin, 2 Abb. U. S. Rep. 257, 259, 260.

The Morton (decided by Mr. Justice Swayne), 1 Brown's Adm. Rep. 137, 138.

2 Conk. Adm. 245-250.

Dunlap's Adm. Prac. 2d ed. p. 117 top.

2 Pars. Ship. and Adm. 492.

This Court has also in several cases decided in harmony with the English doctrines quoted above, questions very closely analogous to those involved in this case. In the schooner Hoppet *vs.* United States, 7 Cr. 389, C. J. Marshall, speaking for the Court, says (p. 394): "These reasons apply to prosecutions in courts of admiralty with as much force as to prosecutions in other courts. It is therefore a maxim of the civil law that a decree must be *secundum allegata* as well as *secundum probata*. *It would seem to be a maxim essential to the due administration of justice in all courts.*" See also pp. 393 and 394.

In Knox *vs.* Smith, 4 How. 298, the Court says at p. 317: "Out of the answer which sets up the deed of trust, the complainants insist they are entitled to relief. Now no relief can be given by a court of equity, except a proper case be made in the bill. The inquiry is not only whether the defendant, from his own showing,

or by proof, has acted unjustly and inequitably, but also whether the complainants, by their allegations and proofs, have shown that they are entitled to relief."

In Rich *vs.* Lambert, 12 How. 347, at p. 356, the Court says: "We have already stated that the libellants charge in the several libels, the damage to the goods to have been occasioned exclusively from the improper stowage of the cargo," &c. "This is denied in the answers; and as the recovery must be had, if at all, according to the allegations in the pleadings, it is incumbent on the part of the libellants to maintain this ground by proofs, in order to charge the respondents." And at p. 359: "It has been suggested that, assuming the presence of salt in the hold may be properly accounted for in the way above stated, this should be considered as evidence of fault in the ship so as to charge the respondents. But, in the first place, to permit the libellants to recover upon this ground would be a departure from that upon which they have chosen to place their right of action in the pleadings; that is founded exclusively upon their improper stowage of the salt between decks; and the proofs in the case have been taken with reference to the issue upon that allegation."

This language of the Court, by Mr. Justice Nelson, is peculiarly applicable to the present case.

In McKinlay *vs.* Morrish, 21 How. 343, the Court at p. 347 "warn the profession that the irregularities of pleading in admiralty, now too frequently occurring, have attracted our attention, and will be treated hereafter according to the rules and practice for pleadings and proofs in admiralty cases." See also p. 346.

And in The Quickstep, 9 Wall. 665, the Court at p. 670 uses this guarded language: "It is objected that the libel is too general in its terms, and is defective because it does not state the particular acts of negligence and misconduct on the part of the tug which produced the injury; but if this were necessary, the objection should have been interposed at an earlier stage of the proceedings, and cannot be taken for the first time after the cause has reached this court. It is always better to describe the particular circumstances attending the transaction; but in admiralty an omission to state some facts which prove to be material, but which cannot have occasioned any surprise to the opposite party, will not be allowed

to work any injury to the libellant if the court can see there was no design on his part in omitting to state them."

The inapplicability of the saving clauses in the opinion last above quoted, to the appellee's case, is too apparent to need illustration.

It is believed that the cases of The Clement, 2 Curtis 363, and Burton *vs.* Salter, 21 Monthly Law Rep. 148, both of which were decided by Mr. Justice Curtis, are the only authorities directly adverse to the position now maintained by the appellants.

The case of The Clement was appealed, and was heard on Friday, January 30th, 1857, by—

Mr. Chief Justice Taney, and
Mr. Justice McLean,
" " Wayne,
" " Catron,
" " Nelson,
" " Grier,
and " " Campbell, (7),

as appears by the Book of Minutes for 1856. By the same book it appears, under date of February 19th, 1857, that the decree in said case was affirmed "by a divided court." As only seven Justices of the Court heard the argument, it is perhaps fair to suppose that Mr. Justice Curtis, who had decided the case below, and who was on the bench the day the decree was affirmed, as is shown by the Book of Minutes, made the necessary eighth judge.

It is also incumbent upon the proctors for appellants to call the Court's attention, in this connection, to the case of Dupont de Nemours *et al. vs.* Vance *et al.*, 19 How. 162. Mr. Justice Curtis, who delivered the opinion of the majority of the Court, considered somewhat the questions now under discussion (pp. 171–173), but expressed himself very guardedly, and applied the views which he entertained to a very different state of facts and pleadings from those in this case. See particularly p. 171. Mr. Justice Catron and Mr. Justice Campbell are stated in the printed report (19 How. 174) to have dissented from the opinion delivered by Mr. Justice Curtis in the last case; and it appears by the Book of Minutes for 1856, under date of January 20th, 1857, that Mr.

Justice Grier also concurred in that dissent. And afterwards, in McKinlay *vs.* Morrish, 21 How. 347, the Court gave to the profession the emphatic warning concerning pleadings in admiralty before quoted.

It is worthy of note that the libels, both in the case of The Clement and of Dupont de Nemours *et al. vs.* Vance *et al.*, contained prayers for other and further relief, 19 Howard 172, 2 Curtis 363. There is no such prayer in the libel in this case.

Mr. Justice Curtis himself, in a later case than The Clement—Burton *vs.* Salter, 21 Monthly Law Rep. 148, thus expressed himself (p. 151): "But inasmuch as the answer admits the disrating, and that this was the reason why the libellant left the vessel, I have considered the libellant not absolutely precluded from availing himself of these admissions and placing the case upon them: though it is impossible not to feel the force of the objection which arises from such a misrepresentation by the libellant of the truth of the case."

Mr. Parsons in his Shipping and Admiralty (2 vol. p. 492), after referring to some of the cases herein above cited, and particularly to the case of The Clement, says: "We are, however, clearly of the opinion, that *not only on principle, but according to the latest authority, the libellant can only recover according to the allegations in his libel*": adopting fully the late English decisions which are relied on by the appellants in this case.

6. If the collision occurred as the appellants have alleged, and as they have fully set out, with references to the testimony, in the earlier part of this brief (*ante* p. 7–10), then the only fault that could with any plausibility be charged against the schooner is, that by her own admission she changed her course, luffing twice, first about one point to the westward, and then a little more.

Letts, 6th Ans. p. 36.

Wolfe, 10th Ans. p. 32.

It is manifest that these changes of course were induced, and in a measure forced on the schooner, by the steamer's persistent attempt to cross the schooner's bows.

They did not baffle the steamer in any way, nor embarrass her. The schooner's green light must have been visible from the first to

those on the steamer, and continued to be visible, and it should have sufficed to warn the steamer that she was pursuing a course which must inevitably lead to a collision. That collision the luffing on the schooner's part tended slightly to postpone, and thereby some little additional time and opportunity were given to the steamer to take the necessary precautions to avoid the impending collision.

The starboarding of the schooner's helm by the captain's order (Van Cleaf, 4th Ans. p. 39) was at the last moment, when the collision was imminent, and was not such a change of course as, under the decisions of this Court, could make the schooner liable as a wrongdoer.

In The Carroll, 8 Wall. 302, the Court, speaking by Mr. Justice Davis, says (p. 305): "The steamer cannot escape condemnation, unless she is able to show that there was no risk of collision, or that she adopted suitable measures to avoid it, and that the disaster was the result of misconduct on the part of the schooner. The fact that the vessels did collide explodes the theory that there was no risk of collision; and besides, why did the mate port his helm if in his judgment there was no risk of it? He says this was done as soon as he saw the schooner. If so, he believed at the time the relations of the vessels to each other were such that they might collide, and the possibility of it is all that is required to charge the steamer, unless she can establish that she was without fault." "The steamer is to blame for suffering this peril to occur, for if it be conceded that the schooner was wrong in starboarding her helm, this cannot affect her right to recover, as she was in other respects without fault, because the steamer, having the right of way, put her in this predicament, and must answer for the consequences."

Again, p. 306: "Porting the helm a point when the light of the schooner was first observed, and then waiting until the collision was imminent before doing anything further, does not satisfy the requirements of the law." "If there was fault on the part of the schooner, the steamer committed a far greater fault in suffering the vessels to get into such dangerous proximity at the moment preceding the collision, and as she has furnished no excuse for this misconduct, is chargeable with all the damages resulting from this collision."

In The Fannie, 11 Wall. 238, the Court, speaking by Mr. Justice Strong, says, p. 240: "The steamer was bound to keep out of the way of the schooner, and to allow her a free and unobstructed passage. Whatever was necessary for this it was her duty to do, and whatever obstructed or endangered the schooner in her course it was the duty of the steamer to avoid. There was but a single obligation resting on the schooner—it was passive rather than active—the duty to keep her course. *If therefore the schooner did not change her course so as to embarrass the steamer and render it impossible, or at least difficult, for her to avoid a collision, there can be no doubt that the steamer alone is answerable for the damages.*"

In The Lucille, 15 Wall. 676, the Court, speaking by Mr. Justice Hunt, adopts and repeats (p. 680), in almost the same words, the portion of the decision in the case of The Fannie quoted in italics above.

In The Falcon, 19 Wall. 75, the Court, speaking by Mr. Justice Swayne, says (p. 77): "It was the duty of the steamer to see the schooner as soon as she could be seen, to watch her progress and direction, to take into account all the circumstances of the situation, and so to govern herself as to guard against peril to either vessel. The steamer was grossly in fault in approaching so near the schooner at so high a rate of speed. This was the source of the disaster that followed."

In The Colorado, 1 Otto 690, Mr. Justice Clifford, speaking for the Court, says, p. 695: "In such a case the rule is that the sailing vessel shall keep her course, so that the steamer may not be baffled or misled in the performance of the duty required of her to keep out of the way." See also pp. 702–3; The Great Republic, 23 Wall. 20, 34, 35; The Sea Gull, 23 Wall. 165, 174, 178, 180, 181.

Irrespective, therefore, of the points relating to the pleadings, which have been so fully discussed, the appellants claim that the decree should be reversed for the reasons stated under this paragraph, supported by the authorities cited.

7. The mere general allegations of fault on the part of the schooner which are made at the end of the third article of the libel (p. 2), will not suffice to enable the libellant to recover or to support his case.

Rule 23. The H. P. Baldwin, 2 Abb. U. S. Rep. 257, 259, 260.

8. The answer is not ground for a decree giving damages to respondent; it can only be made available to oppose or defeat the libellant's claim.

But if the appellants here are to be condemned solely because of admissions made in their answer, that answer is made more available for the libellant when it contradicts his case, than it is for the side which successfully pleads it.

It is a contradiction in terms and in fact to hold that the answer shows the libellant's case to be false, but sustains his recovery; and at the same time to determine that it establishes the truth of the respondent's case and makes him liable in damages: The Dove, 1 Otto 381, 383, 4.

And if the appellee can rely on the appellants' admission and proof of slight change of course, he must rely upon the whole case and proof presented by the appellants; and not upon an isolated fact without bringing in the surrounding circumstances.

F. W. BRUNE,
ARTHUR GEO. BROWN,
Proctors for Appellants.

Supreme Court of the United States,

FREDERICK DAVEY et al., Claimants of the Schooner Morgan, Appellants,

vs.

JOSEPH GOOD.

BRIEF OF COUNSEL FOR THE APPELLEE.

I. NEVETT STEELE,
THOMAS WM. HALL,
Of Counsel for Appellee.

PHILADELPHIA BAR ASSOCIATION

The Rule Printing Establishment.

Supreme Court of the United States.

FREDERICK DAVEY *et al.*, CLAIMANTS OF THE SCHOONER STEPHEN MORGAN, APPELLANTS,

vs.

JOSEPH GOOD.

BRIEF OF COUNSEL FOR THE APPELLEE.

This is an appeal from a decree of the Circuit Court of the United States for the District of Maryland in Admiralty, *affirming* the decree of the District Court, dividing the damages in a collision case, between a steamer and sailing vessel. The original libel was filed by the appellee, owner of the British steamer *Carolina*, whose damages, caused by the collision with the schooner *Stephen Morgan*, were assessed by the District Court at $11,057.08 (decree, p. 42). The schooner's damages were assessed by the same decree at $458.12. The Court (Giles, J.) being of opinion that the collision was caused by the fault of both vessels, decreed that the damages should be divided, and that the appellants, claimants of the schooner, should pay the appellee $5,299. From this decree *both* parties appealed. The cause coming to be heard before the Circuit Court, Judge Bond affirmed Judge Giles' decision (decree, p. 65), assessing the steamer's damages, however, at $10,791.22, and decreeing that the appellants should pay $5,166.55. The only question in the case being a question of fact, and there being no difference between the Circuit and District Courts as to the principle of their respective decisions, or the rule of damages adopted, and but a trifling difference in the amount of damages

awarded the steamer, no further appeal was taken by the owner of the steamer. The case comes before this Court upon the appeal of the claimants of the schooner.

STATEMENT OF FACTS.

The collision occurred in the Chesapeake Bay, off York Spit Light, near the mouth of the York River. It took place about twenty minutes past four o'clock on the morning of October 3d, 1872, and therefore about an hour before sunrise. The steamer, an iron vessel, of about 1100 tons, was outward bound, from Baltimore to Queenstown, with a cargo of corn. The schooner, a three masted vessel, of 259 tons, was coming up the bay in ballast, bound from New York to Georgetown, D. C. The steamer was in charge of a Chesapeake Bay pilot, steaming at the rate of seven to eight knots an hour, and her course, before the collision and when the schooner was first sighted, was S. by W. The schooner was coming up the bay with a fair wind from the S. W., and with all sails set except the jib-topsail, and running about eight knots an hour. The schooner's course, when she first sighted the steamer, according to the statement in the answer, was N. by W (p. 6), according to the statement of her helmsman, N. N. W. (Paul Wolfe, p. 32, 10th Int.) The weather was fine and clear, and the wind S. W.

RULE OF THE ROAD.

For two vessels approaching each other, under the above circumstances, the rule to be observed is that *the steamer shall keep out of the way, and that the sailing vessel shall keep her course*—a rule, as repeatedly declared by this Court, of *reciprocal and mutual obligation*.

U. S. Rev. St. p. 823, (Steering and Sailing Rules 20 and 23).
The Free State, 91 U. S. S. C. 204.
The Wenona, 19 Wall. 51.
The Scotia, 14 Wall. 181.

CASE AS PRESENTED IN THE PLEADINGS.

The steamer's case is presented in the Libel (p. 2); the schooner's in the Answer (pp. 6, 7). The vessels appear to have sighted each other *simultaneously*, about twenty minutes past 4 A. M., at a distance, as stated in the Libel, of "about two miles;" in the Answer, at "a mile and a half to two miles." According to the Libel, a "red light" was reported ahead by the man on the lookout, and also seen by the pilot, and by the pilot's order the steamer's helm was ported, so as to change her course from S. by W. to S. S. W., bringing the red light about two points on the steamer's port bow. It was soon after discovered that the red light was borne by a three masted schooner, coming up the bay, "yawing considerably and steering wildly." As the vessels neared each other, the schooner being still on the port side of the steamer, the pilot ordered the steamer's helm to be put hard a-port, bringing her head round to the S. W., in which direction she was heading when she was struck amidships on the port side by the schooner. It is alleged in the Libel that before the collision, the schooner then (according to the *testimony*) bearing at least four points on the steamer's port bow, suddenly starboarded her helm; that she was hailed from the steamer and warned to *put her helm up*, said schooner being then on the port tack and having the wind on the port side, but that no attention was paid to the steamer's hail, and that the immediate cause of the collision was the sudden putting of the schooner's helm *hard down*, or to the starboard. Strict observance of all regulations respecting lights, &c., and denial of any negligence or unskilful management on the steamer's part, are averred in the 3d article of the Libel.

The Schooner's Fault Admitted.

The Answer (p. 6) declares that the schooner's lookout first "saw a bright light ahead, about a point or a point and a half on the starboard bow. He looked around to report

to the mate, who was aft, but saw him already standing looking at the light through his glasses. The lookout then resumed his watch *and continuously observed said light, which he thought belonged to a vessel at anchor.* The mate, who was standing aft, to the leeward of the spanker-boom, and also on the watch, saw the light about the same time as the lookout, and immediately got his glasses, which were just at hand, and looked at it. *He supposed it to be the light of a ship at anchor*, because there was none but a white light to be seen, and thought she was distant 1½ to 2 miles." "When he first looked at the light, *the mate told the man at the wheel that it was a ship at anchor*, and he directed him to let the schooner luff about a point." [This was change in the schooner's course No. 1.] "That being done, the light was brought to bear about two points on the schooner's starboard bow. The helmsman then steadied the schooner, which was running about 7 or 8 knots an hour, and the mate stood looking at the white light, which was still the only one visible, and let the schooner run on a little. Then thinking the schooner *might not fairly clear the ship, supposed so to be at anchor*, the mate told the man at the wheel *to luff a little more*, so as to allow plenty of room. He did so, [this was change in the schooner's course No. 2,] and the schooner ran on a little way." "Very soon after this last mentioned order, and about seven or eight minutes after the bright light was first seen, the schooner being then very close to the vessel which bore it, it was discovered that the said vessel was a steamer by her smoke-stack. The two vessels being then very close together, the mate feared it was impossible to keep off and avoid a collision, but nevertheless, in the hope of doing so, he ordered the helmsman *to put his wheel hard-a-port.* At that moment the captain came on deck; while in his berth below he had heard the mate say: 'Let her luff,' [change of course No. 1,] and soon after, 'Let her luff,' again, [change of course No. 2.] He then ran on deck and asked

the mate what was the matter. The mate said there was a light on the lee bow. The master looked under the boom and saw the light, and *ordered the wheel to be put hard down*, which was immediately done. [Change of course No. 3 and the immediate cause of the collision.] Almost immediately after the schooner's helm had been put hard-a-starboard the collision occurred" [p.7]. The Answer denies that any hail was heard from any one on board the steamer, and alleges [p. 7] that "*nobody on board the schooner thought the vessel they were approaching was in motion, until just before the collision.*"

Here we have in the pleadings the successive changes of the schooner's course charged in the Libel, and as distinctly admitted in the Answer. *The schooner did not keep her course*, as the law of the road [Sailing and Steering Rule 23] directs.

No Excuse for Schooner's Change of Course.

It is no excuse for this violation of the rule on the schooner's part that those on board of her mistook the steamer's lights for those of a vessel at anchor, as they admit to have been the case. The steamer was approaching from the opposite direction at a rate of speed equal to that of the schooner, viz: seven or eight knots an hour. Those in charge of the schooner should have been undeceived:

First, by the rapidity with which they approached the supposed stationary light, estimated to be from one and a half miles to two miles distant; and

Secondly, by the difficulty they experienced in clearing the supposed stationary vessel after two successive changes of course made for that purpose. When first seen the steamer's "bright light" was "ahead;" after the first change of course, which had the effect of bringing the steamer's light to bear about two points on the schooner's starboard bow, had the light, as supposed, been borne by a vessel at anchor, it would have opened out at a constantly

increasing angle as the schooner ran on her diverging course. Instead of that, the mate fears "that the schooner might not fairly clear the ship, supposed so to be at anchor," and "told the man at the wheel to luff a little more, so as to allow plenty of room."

See *The Gray Eagle*, 9 Wall. 511, 512.

See, also, the testimony of Abram J. Letts, mate of schooner, p. 37.

> 2d Cross Int. If said light had been upon a vessel riding at anchor, the schooner's course being changed by you, as described, for the purpose of passing clear of said vessel supposed to be at anchor, would not said light have appeared to pass every minute more and more on your starboard?
>
> Ans. Well, not at that distance; it would not so very much, I suppose, she being about two miles ahead.
>
> 3d Cross Int. Ought not said light, if stationary, to have borne still farther on your starboard bow as the distance lessened?
>
> Ans. Yes, I suppose it would.
>
> 7th Cross Int. If you were watching the steamer's light all the time, did it not occur to you that you were approaching very rapidly a stationary light?
>
> Ans. Yes, I thought we were.

POINTS.

I. These changes of course on the part of the schooner being admitted, and the collision ensuing, it logically follows that had the schooner kept on her course, as the law directs, there would have been no collision.

II. The confusion of orders, just preceding the collision, on board of the schooner—the mate, who was in charge of the deck, ordering the schooner's helm to be put *hard-a-port* —the captain rushing out of his berth and ordering the helm to be put *hard-a-starboard*, which was done—is also unequivocally admitted in the Answer, and fixes the responsibility

for the collision on the schooner. The effect of putting the schooner's helm hard-a-starboard was to cause her to describe almost a semi-circle from her previous direction of N. W. by N., as stated by her helmsman, to W. by N. ½N., and she was of course still going round to the W. when she struck.

(Paul Wolfe, p. 32.)

The steamer, with her helm hard-a-port, had changed direction from S. S. W. to W. S. W., and was, according to the pilot, still going round to the W. when she was struck.

(Daniel Evans, p. 54.)

The schooner's case, as presented by the testimony, does not differ from the allegations of the Answer. The Answer, as the dates in the Record show, was not filed until after the depositions of the schooner's crew had been taken, and the schooner's Answer and witnesses naturally agree. This fact dispenses with the necessity for any detailed examination of the testimony of the crew of the schooner, for the purpose of ascertaining how far it accords with the statements of the Answer. No better case is made for the schooner by the testimony that appears in the Answer. According to the admissions of the Answer the schooner *was clearly in fault, and by her fault the collision was occasioned.*

Was the Steamer in Fault?

III. The only excuse that is attempted or could be given for the admitted blunder on the part of the schooner's people in mistaking the steamer for a vessel at anchor, is that only the steamer's white or masthead light was seen from the schooner. This excuse, as shown by the admissions of the mate, and the reasoning of this Court in the case of the *Gray Eagle*, (9 Wall.) is insufficient. The inference, purely negative, that the steamer had no other lights displayed is destroyed by the positive and affirmative testimony of the steamer's pilot, officers and crew.

There were on deck and on duty on the steamer at the time of and just before the collision, the pilot, Daniel Evans, who was in charge of the navigation of the ship; Robert Fowler, the chief officer, in charge of the watch; James McEvoy, able seaman, at the wheel; Lawrence Ramsey, able seaman, on the look-out; Samuel Thaxter, boatswain; and David Hedges, boy (aged 18), who formed part of the watch.

Robert Fowler testifies (p. 15):

> I took charge of the deck at 10 minutes past 4. I had my attention directed to the lights by asking the second mate if the lamps had been trimmed, and I could see the mast-head light and the reflection of said lights from where I was standing. [On the steamer's bridge.]

David Hedges testifies (p. 9):

> I came on deck that morning at 4 o'clock, and when I came on deck the second officer told me to trim the side-lights and masthead light, and I did so. I went into the lamp-room after I trimmed the lights, and I came out on deck and heard the pilot shouting, and I came out to see what he was shouting, and just at that time the schooner struck us.
>
> There was one light at the masthead, (a bright light,) one on the port-bow (red), and one on the star-board bow (green), and they were all burning bright. They were taken in at half-past five; I took them in and they were then burning bright.

Lawrence Ramsey testifies (p. 11):

> I did notice the steamer's lights before the collision. She had two side lights and a masthead light, and they were burning well. I mean a red and green light on either bow, and also a masthead light. "I noticed the lights" just after I reported the schooner's red light. (p. 12.)

James McEvoy, at the wheel; from his position could only see the masthead light, which was "burning very well." (p. 13.)

Samuel Thaxter, boatswain, (p. 19,) testifies:

> That the lamps, viz: the port, starboard and masthead lights "were trimmed at 4 o'clock by the boy, David Hedges." Witness "noticed them after they were trimmed, and noticed them at half-past 4 o'clock. They were burning brightly." Witness describes minutely (p. 19) the position of the lights and mode of displaying them, which was strictly according to law; and also, upon cross-examination, (pp. 20, 21,) the mode of trimming, taking them in one by one for the purpose, and temporarily replacing the one so taken in by a relieving light, constructed so as to show, by its different lenses or faces, either a red, green or white light.

Captain Robert Macgarr, master of the steamer, testifies (pp. 23, 24) in regard to the lights, rule as to trimming them, and use of relieving light.

Daniel T. Evans, Maryland pilot, testifies (p. 54):

> That before and at the time of the collision the steamer's lights were in their proper places and burning properly; that the lights were trimmed at 12 and at 4; that he saw the boy and the boatswain passing forward from the lamp-room with the lights; that the lights were taken in at half-past 5, and were burning brightly.

There is *no testimony whatever* to refute the positive and concurrent testimony of all these witnesses, that before and at the time of the collision the steamer's lights—all three of them—were properly placed, displayed and burning; nothing but the negative testimony of the schooner's mate, helmsman and lookout, that they saw the steamer's bright, or masthead light, and no other.

It is unnecessary to determine whether the schooner's people did or did not see the steamer's red or side light. It is sufficiently proven that they ought to have seen it. "The haze upon the water," (the night being otherwise confessedly clear,) the existence of which is testified to only by the schooner's people, did not prevent the schooner's red light

from being seen at the distance of two miles by those on board the steamer.

IV. In the absence of any written opinion filed in the case by either the Circuit or District Judges, there is nothing in the Record to show what "fault" the Court below imputed to the steamer which led to the division of damages. No exception is taken in the Answer to the failure of the steamer to slacken her speed, or stop and reverse her engines, nor do the facts as proven show a case of necessity for such precaution as is contemplated by Sailing Rule 21.

The Free State, 91 U. S. S. C. 204-6.
The Scotia, 14 Wall. 182.

It was not the case of a narrow channel or crowded thoroughfare, but on the broad bay. To require a steamer on the Chesapeake Bay to slacken speed or stop upon the approach of any vessel coming from an opposite direction would be to make the voyage up or down the bay consume more time than crossing the ocean. For the steamer to have slackened speed, stopped or reversed, after the schooner starboarded her helm, which was the immediate cause of the collision, would have had the effect probably of sinking both vessels by the greater violence of the blow. The force of the blow was weakened by the fact that the steamer, her helm hard-a-port and under headway, was *going away from* the schooner at the moment the latter *was coming toward* her.

The chief officer, Robert Fowler, testifies (p. 17):

> To have stopped the engines after we found the collision was unavoidable, would only have increased the effects.

The pilot, Daniel T. Evans, testifies (p. 54):

> 12 Int. Did you give any order before the collision to stop or reverse the steamer's engines; if not why was not such order given?

Ans. No such order was given for the reason that if the engines had been stopped both vessels would probably have been sunk.

13 Int. How was the steamer heading at the moment of collision, and how was her helm?

Ans. She was heading from S. W. to W. S. W., and her helm was hard-a-port.

14 Int. What was the direction of the blow from the schooner; was it or was it not a square blow, and how did the schooner head the moment after the collision, when the vessels separated?

Ans. It was a glancing blow, *from aft-forward, in that direction.* The steamer was going off-to-port; the schooner put her helm hard to starboard and struck her a glancing blow as I have described. The moment after the collision the schooner headed the same way as the steamer, they then separated.

15 Int. Was the effect of the blow increased or lessened by the fact that the steamer's engines were kept going, her helm being at the same time hard-a-port?

Ans. It was lessened, in my opinion.

V. The schooner's people say that they heard no hail or signal of any kind from the steamer. Those on the steamer, chief officer, pilot and crew, testify positively that the schooner was hailed and warned to put her helm up, if she would avoid collision. It may be that the same dullness of the senses which prevented the schooner's people from discovering that the vessel they were approaching was a steamer in motion until after the collision, prevented them from hearing the steamer's hail. See testimony of Abram J. Letts, mate of schooner, p. 37.

10 Cross Int. When did you first discover the steamer to be in motion?

Ans. *After we came together.* I could see her screw making the water fly. That was the first discovery of it that I made.

VI. *There was no error in the steamer's change of course.* It was the steamer's duty to keep out of the way. Those in charge of her had the right to assume that the schooner would hold her course.

The Free State, 91 U. S. S. C. 204, and cases *ut supra.*

All on board of the steamer, the chief officer, pilot, look-out and helmsman, concur in testifying that it was the schooner's *red light* that was first seen, that it was the only light seen, and that it was continuously seen bearing on the steamer's *port* bow.

Robert Fowler, pp. 15, 16.
Lawrence Ramsey, p. 11.
James McEvoy, pp. 12, 13.
Daniel T. Evans, pp 53, 54.

When the schooner's red light was first seen on the steamer's port bow, the steamer was steering, according to the testimony of both pilot and helmsman, S. by W.

Daniel T. Evans, p. 53, 5th Int.
James McEvoy, p. 12, 4th and 6th Int.

The change made, therefore, by altering the steamer's course to S. S. W. was a perfectly proper one. *It was a diverging course* and out of the way of the schooner.

There is a conflict of testimony as to the relative position of the two vessels at twenty minutes past four, when they first sighted each other. That of the officers and men of the steamer is explicit and positive that they saw the schooner's red light on the steamer's port bow. This would place the schooner, coming up the bay, *to the eastward* of the steamer going down. The schooner's people do not profess at any time to have seen either the steamer's green or red light, although the testimony is conclusive and unanimous that

both were displayed and burning. They locate the steamer solely by her bright or masthead light, which would not indicate direction, and which they claim to have mistaken for the light of a vessel at anchor. This light, they allege, they first saw, and continuously saw, on the schooner's starboard or lee bow, the schooner's course being nearly north, with the wind S. W. In the Answer it is expressly stated (p. 7):

> That the steamer, from the moment that she was first seen until the collision, was always on the *starboard side* of the schooner, and that the changes of course made on the schooner, until and including the last one, were made with the object and *direct tendency* to bring the light of said steamer more and more on the starboard side of the schooner, and *to increase the distance between the two vessels* . . . . . That the steamer, being always on the starboard side, *it was impossible for those on the steamer at any time to see the red light of the schooner, but that her green light must have been plainly visible to them.*

The refutation of the whole of this theory and of the testimony adduced to support it, is furnished by the simple fact that the collision took place. "The changes of course made by the schooner," thus explicitly admitted, instead of having "the direct tendency to increase the distance between the two vessels," had the effect to lessen that distance, with the final result of bringing them into violent collision. The testimony and argument on the part of the schooner, if they prove anything, prove that the collision never took place, for the obvious reason that two vessels upon constantly diverging courses cannot come into collision. The positive statements of the steamer's witnesses as to what light *they did see*, must outweigh the argument of the schooner's people as to what light they *ought to have* seen, in fixing the relative position of the vessels.

The Dove, 91 U. S. S. C. 381.
The Fannie, 11 Wall. 242.
The Sea Gull, 23 Wall. 179.

VII. The uncertain and zig-zag course of the schooner put it out of the power of those in charge of the navigation of the steamer to adopt any other course than that of heading the steamer more to the westward, that is, more in-shore, leaving the wide bay to the schooner. The successive changes of the schooner's course by "luffing," and then "running on a little," and then "luffing" again, and again letting her run on, as observed from the steamer's deck, had precisely the appearance of "yawing considerably and steering wildly" charged in the libel and testified to by Robert Fowler, the chief officer of the steamer, p. 16, 17th Int.

CONCLUSION.

From all the testimony in the case, the following conclusions appear naturally to follow :

First. That the cause of the dangerous proximity of the two vessels, was the schooner's failure to keep her course, and that the effect of the schooner's "luffing" was to put her on a course converging with that of the steamer, and to frustrate the endeavor of the latter to keep out of the way. That the schooner's changes of course were occasioned by the mistake of those in charge of her, in supposing the steamer to be at anchor, does not lessen the schooner's responsibility for bringing the two vessels into such dangerous proximity as to make a collision imminent.

Secondly. That the immediate cause of the collision was the putting of the schooner's helm hard astarboard by order of the captain, when the only chance of avoiding a collision was by putting the helm hard aport, as the mate had ordered, and as the helmsman was in the act of doing, when the contrary order was given by the captain.

RULE OF DAMAGES.

The extent of the damages sustained by the steamer is shown by the certificate of survey, p. 63. There is no controversy as to the rule of damages adopted, or as to the amount of damages assessed by the Court below, the rule of damages being in accordance with that laid down by this Court.

Williamson vs. Barrett, 13 How. 110.

I. NEVETT STEELE,
THOMAS WM. HALL,
Of Counsel for Appellee.

Steamboat
outward bound
Seaworthy
a full
from N Y
collision on
side of steamer
Hard astarboard
same as hard down

6 Wall 594

8 Am Dec 302

4-604

Henry

v

Langdon

This is a motion
and not among
the